

492 Q: Are you aided in any way in determining the probable intent of the parties by observing the fact that Hachenburg put in his draft provisions for a holding company? A: Certainly; I am very much impressed by that; and because it indicates to me that Hachenburg indicated the holding company, and then the holding company was stricken out—that the Opels, or Wronker-Flatow, or whoever it was, didn't like the holding company, and struck it out.

Q: In the Hachenburg draft, which is Plaintiff's Exhibit 8, these words appear in the second paragraph:

"The shares are, at the present time, deposited with General Motors in New York."

A: Yes.

Q: There is no reference to General Motors in the final draft, is there? A: Might I see again the contract?

"Our claim for the delivery of these shares," it says on the first page.

And "These stocks are deposited at present with the bank," in the second paragraph.

There is no reference to General Motors.

Q: In the Hachenburg draft it says the stock is deposited with General Motors, and in the Wronker-Flatow draft it says they are deposited with the bank.

Does that lead you to the conclusion that he didn't  
493 like that and struck it out? A: It only leads me to the conclusion that since he drew it himself, that he didn't know whether the shares were deposited with General Motors or in behalf of General Motors in the National City Bank—and that is all I concluded on that.

Q: Well, in any event, the Hachenburg draft recites that the shares were deposited at New York, whereas the Wronker-Flatow draft merely refers to it as a bank.

Isn't it clear to you that Wronker-Flatow, at the time he revised the Hachenburg draft, went through it to delete those portions of the Hachenburg draft which would expose the scheme too much, that is, the scheme to transfer, whether or not it was a valid gift, to transfer what was

in effect a claim against General Motors? A. I have really no way of answering this question because I cannot really see how in Wronker-Flatow's mind it was. I think, oh, I used this section, for the comparison which is to find if there were changes. Where General Motors was to be changed to bank, that has certainly no legal significance. Whether it has any other significance, I don't know.

Mr. Boland: Your Honor, I think questions of that nature are highly improper. It asks if this doesn't show a scheme Wronker-Flatow has.

494 The Court: Well, he has answered it.

Mr. Busling: I concede it would have been objectionable, Your Honor, except for the length to which my friend went this morning in developing inferences.

The Court: I think it is argumentative.

Do you gentlemen have some motion here to argue?

Mr. Ingoldsby: Yes, Your Honor, we have.

The Court (To Mr. Burling): Are you about through with the witness?

Mr. Burling: No, Your Honor, I would have at least half an hour more.

The Court: Then I will hear this argument on the motion.

(To the witness): Can you be back at 10 o'clock in the morning?

The Witness: Yes.

The Court: I will excuse you until ten.

(Witness excused accordingly.)

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# PROCEEDINGS

Mr. Ingoldsby: May I address the Court, Your Honor?

The Court: Yes.

Mr. Ingoldsby: Your Honor, I file herewith a memorandum in opposition to the memorandum filed by the Government yesterday.

The Court: All right.

Mr. Ingoldsby: And may I ask at this time, Your Honor, whether we would be entitled to a full copy of the statement from which an excerpt was taken regarding the statement of a witness in Germany?

The statement was contained in the defendant's memorandum filed yesterday regarding a statement purportedly made by Wilhelm von Opel prior to 1933.

Does Your Honor recall the statement to which I refer?

The Court: No, I don't believe I do.

Mr. Ingoldsby: The statement in effect stated that there was a witness in Germany who had stated that some time prior to 1933 Mr. Wilhelm von Opel had stated that he could not trust anyone, even Wronker-Flatow, because Wronker-Flatow had borrowed some money from Mr. von Opel and then had executed a crooked contract for Mr. von Opel, and now Mr. Wronker-Flatow was in effect threatening or shaking down Mr. von Opel.

The Court: And what is your question?

510 Mr. Ingoldsby: My question is, may we have a copy of the entire statement from which the excerpt was taken?

The Court (To counsel for the defendant): What do you say to that?

Mr. Burling: I would be glad to furnish counsel with such copy. I don't have it with me, but tomorrow morning I would be glad to furnish it to counsel.

The Court: All right. I will dispose of this other matter at the noon recess.

Mr. Ingoldsby: And may I ask counsel at this time if they propose to bring that witness from Germany?

Mr. Burling: We do not, Your Honor. We did not learn of this until a day or so before the trial, when we received the report.

Mr. Ingoldsby: All right.

Now, may I ask one other question of the defendant's counsel?



Yesterday Mr. Burling mentioned several times the principle of equitable estoppel. If he intends seriously to contend that the doctrine of equitable estoppel applies to any question of this case, Your Honor, we would like to present a legal memorandum for the benefit of the Court on that topic. If he seriously relies on it, I wonder if he would mind telling us at this time to what set of facts in this case he considers the principle applicable.

511 Mr. Burling: I would be glad to do that. The set of facts to which I refer is that in 1933, a few days before the banks closed, Uebersee Finanz-Korporation bought \$1,250,000 of gold coin in the United States. They desired to export this; but on March 4 the President by Executive Order forbade the exportation or possession of gold, and on March 9 Congress ratified that, making it illegal for a private person to possess gold or export gold.

Uebersee had a legal theory that if it could establish that Wilhelm von Opel had a beneficial interest in the gold, then the gold could be exported; and a suit was brought by Uebersee, the plaintiff here, which was in effect a suit against the United States.

It was a suit against the bank account that had possession of the gold, and against the Federal Reserve Bank which, as agent for the Government, was to receive the gold.

The action was to enjoin the Federal Reserve Bank from requiring that the private bank turn over Uebersee's gold, against payment in dollars. And Your Honor will recall, of course, that the paper dollars which Uebersee would get back represented, I think, 59 cents in the old gold dollar. So that some \$700,000 was involved. That is, if Uebersee could have gotten the actual gold coins to Switzerland, they would have been some \$700,000 better off.

In pressing that suit, Uebersee filed with the  
512 District Court for the Southern District of New York affidavits executed by Wronker-Flatow, by a Swiss lawyer named Meyer, and by Fritz von Opel; and also filed as a part of the proceeding legal memoranda



prepared by Isadore Kressel, one of its counsel, and by Davis, Polk, Wardwell, Gardner & Reed, all of which were to the effect that a usufruct had in fact arisen and had followed through the Opel shares into intermediate securities and cash, and finally resided in the gold coin.

That case was argued in the Southern District, and then was argued, as I said yesterday, in the Second Circuit, by John W. Davis, and by Mr. Kressel in rebuttal.

We say that the plaintiff cannot now assert that no usufruct arose, in view of the fact that the plaintiff swore, both as to its understanding of the German law, through its German lawyer, Wronker-Flatow, and as to the facts by the affidavit of Fritz von Opel, that delivery was made; that the key, as I remarked yesterday, was handed over; that the proceeds were put in Uebersee, and the shares of Uebersee were put in Box 1917 in the Swiss Credit Bank—Schweizerische Kreditanstalt—and the key to that box was then delivered to Dr. Hans Frankenberg, as agent for Wilhelm von Opel.

That is the testimony of Fritz von Opel, in the earlier suit. And we propose to argue that that estops the plaintiff now from saying that the usufruct did not  
513 arise, or from saying that the key was not delivered.

DR. HEINRICH KRONSTEIN resumed the stand and was examined and testified further as follows:

*Cross Examination (Continued)*

By Mr. Burling:

Q. Dr. Kronstein, I would like to see if we can in a few words recapitulate what your testimony on cross  
514 examination was yesterday. Am I correct in believing that you testified, first, that if and on the hypothesis that Wilhelm von Opel and Fritz von Opel understood in 1931 and intended and agreed that no gift was

to take place, and they understood that the purpose of the transaction was solely to make it look as if Fritz von Opel were the title holder to the 600 shares of Adam von Opel, but that really Wilhelm was to remain in ownership, then even if Plaintiff's Exhibit 5 was executed, title did not pass.

Is that correct, sir? A. Yes, you understand me correctly.

Q. Thank you. And am I also correct in believing that you testified that if, and again on the hypothesis that the proceeds of the shares of the Opel stock were all used either in buying Uebersee or put into Uebersee—

Did you understand me so far? A. Yes, sir.

Q. The proceeds were all put into Uebersee, and the shares of Uebersee were put in Box 1917 in the Schweizerische Kreditanstalt, and the key to that box was handed by Fritz von Opel to Dr. Hans Frankenberg, as agent for Wilhelm, and Frankenberg acted as agent for Wilhelm and received possession of the key; then a valid usufruct arose in the persons of Marta and Wilhelm von Opel under the usufructuary provisions of Plaintiff's Exhibit 5.

Is that correct, sir? A. Yes. But you added, now, 515 the Schweizerische Kreditanstalt, which you didn't mention, at least I didn't get; and Swiss law would apply, probably, to the question whether the right in rem has been established, because that would be situated in Switzerland and would follow the Swiss law. If it would follow the German law, in which I am only an expert, on the Niessbrauch, I don't know whether it would be established by this method.

Q. But under the German law, is it not true that delivery at Zurich would constitute valid delivery? A. No, not as a matter of German law; because, as a matter of German law, German conflict law looks to the place where the property is situated. Therefore the German conflict law would look to the Swiss law for the question whether the right in rem has been established.

Q. So it is your opinion, is it, that my present hypothesis, that is, if the delivery took place in Zurich, then it is impossible for a German lawyer to answer the question, because he does not know what the Swiss law is on that point, theoretically? A. At least from the theory of an expert.

Q. From the theoretical point as an expert? A. Yes.

Q. I understand. Now, did I also understand you to say, Doctor, that there is nothing in the Hachenburg 516 draft, or the Hachenburg letter transmitting the draft, or in the conveyance itself, that is, Plaintiff's Exhibit 5, which is inconsistent with the hypothesis I just stated? A. I stated so.

Q. Now, my next questions, Doctor, are not designed to suggest anything more than the possibility that a lawyer becomes interested in a case he works on, and that sometimes affects his judgment--nothing more than that, sir.

Will you state when you were first connected with this case? A. I was consulted before the first deposition in Germany took place, and was asked to support Mr. Connor in taking the deposition in Germany.

Q. And when were you first consulted, please, Doctor?

A. That was about July, maybe in June, 1947.

Q. And then you and Mr. Connor traveled to Germany for the purpose of taking the Wiesbaden depositions? A. Yes.

Q. Is that it? A. Yes, sir.

Q. You acted as interpreter during those depositions for Mr. Connor? A. Yes, I did.

Q. And did you also advise Mr. Connor on the 517 general conduct of the depositions? A. Mr. Connor doesn't need my advice on taking depositions. But I advised him on the German law.

Q. I see. And you also conducted some investigational activities in Germany, did you not? A. No.

Q. Have you ever been in Ludwigshafen? A. No; I wasn't even at the time I was general claims assistant, in Ludwigshafen; I wasn't in Ludwigshafen for many years.



I never was in Ludwigshafen—I never did anything in the form of investigation. All that I did was that the lawyers for the Government and Connor asked me to go to Ruesselsheim and to look over certain files and to bring to both lawyers whatever I found there, which is what I did.

Q. Does the name Giulini mean anything to you Doctor?

A. Oh, yes—a former client and a friend of mine.

Q. Have you ever made any inquiries concerning this case of any persons associated with Giulini Brothers? A. No; I wrote to my former law partner, who was my law partner at the time I was there; I wrote to him, after I read the name of Giulini in the case, and asked him about the facts he has in his files.

Q. That is, facts concerning either Uebersee's participation or Fritz von Opel's participation in the production of bauxite in Hungary? Is that right? A. Yes.

518 Q: You know, as a matter of personal knowledge, do you not, that Mr. Fritz von Opel's funds in the United States—whether or not they are his; the ones he claims to own—have been vested by the Alien Property Custodian? A. Yes.

Q. You know of your own knowledge, also, do you not, that the plaintiff corporation, Uebersee Finanz-Korporation, has been blocked in Switzerland? Isn't that true? A. I don't know that out of direct knowledge. I know that only from reading the files, that that was blocked under the Washington Accord. I think—the use of the word "blocked", the Washington Accord provides that Switzerland in all cases in which doubt exists, on the ownership, will advise firms that they cannot make any disposition of their property until a final finding by the American and by the Swiss Compensation Office, which operated under the American-Swiss Accord, until it has made its final finding.

Q. What I am getting at is, you know the estate cannot use any funds it has, it cannot now dispose of them. A. It cannot dispose of the funds in the United States. This

blocking; therefore—I didn't want to use the word "blocking"—only refers to the question whether Uebersee can get the property back in the United States. Under the Washington Accord, as far as I understand it, 519 Switzerland is authorized to make the first finding, whether a firm having property in the United States is German or not German. And as long as this investigation is not finished, the Compensation Office doesn't hand in the so-called certification. And the blocking has only to do with the property within the United States.

Q. Well, the Accord refers expressly to property within Switzerland, doesn't it? A. No; it refers to corporations established in Switzerland. Certainly there are provisions in regard to property in Switzerland. But this certification provision, and as far as I know, I have no knowledge of this case. I am now going a little bit in the field of speculation, because I don't know.

Q. Is it not your personal opinion that the plaintiff corporation has no funds which it can dispose of in Switzerland? A. I really haven't seen any of the papers. I haven't seen any of the documents. I really don't know how I can make under oath a statement of the actual situation.

Q. Then I will ask you another question: You haven't received any funds from the plaintiff corporation in Switzerland, have you?

Mr. Boland: Your Honor, we object to that question. This seems to be an attempt to look for funds which 520 have not been vested by the Alien Property Custodian, and I suggest this is not the proper place to do that.

The Court: What is the purpose of this inquiry?—as to whether he has received any funds from Switzerland?

Mr. Burling: The purpose of the inquiry is to show he has not received any funds from Switzerland, and the plaintiff could not, at the present time—

The Court: I don't know whether that is correct cross examination.

Mr. Burling: Very well; Your Honor.

Mr. Gallagher: May I state Dr. Kronstein has been compensated from Switzerland during the past year and he is not waiting, as Mr. Burling is trying to infer, that he is not going to get anything until this case is over?

The Court: Well, gentlemen, if you want to go into it, it is all right with me. I thought one of you was objecting.

Mr. Boland: We do object, Your Honor.

Mr. Gallagher: To Mr. Burling's line of inquiry.

The Court: Very well. We will let it all go out.

By Mr. Burling:

Q. Have you examined the photostat of the decision of the German Supreme Court dated April 8, 1932, in Volume 136, pages 100 et seq.? A. I got it this morning, and I recognized this decision.

521 Q. Have you had occasion to read it? A. Yes; I know the case.

Q. You do? A. Yes. I didn't know yesterday the number of it. When you said Volume 136, and the number, I didn't know it by the number.

Q. Naturally, but you can express an opinion about it? A. Certainly, definitely.

Q. Is it not correct that in this case the plaintiff, a manufacturer of sugar, sold to a merchant a consignment of sugar, agreeing with him that title should remain with the merchant until the purchaser had paid in full? Is that correct? A. Yes.

Q. And is it not correct that the agreement was that the buyer was to resell the merchandise as his own, and if he sold it prior to the payment of the purchase price, the proceeds obtained, or the claims resulting from the resale, were to pass into the ownership of the manufacturer, that is, the plaintiff? A. The claims?

Q. The proceeds. A. The proceeds, the claims, for the sale of the sugar. He can sell the sugar, and then it is



agreed that instead of that, instead of the sugar,  
522 the claims shall be assigned to the manufacturer.

Q. Isn't it true that the agreement also contemplated, if the resale price was paid, that is, the proceeds were received, that title to the proceeds— A. The money.

Q. That title to the money passed automatically to the original seller? A. The money, yes.

Q. Thank you. And is it not true that in that case the man who first bought the sugar did in fact resell it, and the money was put in his bank account? A. The claims arose, since the claims were given to the manufacturer, and it was the claims; and the money came in on these claims, and the money was certainly owned by the manufacturer.

Q. I am only trying to get the facts straight, Doctor.  
A. Yes, sir.

Q. Will you listen to the facts and see if you do not agree with me. Isn't it a fact that the sugar was resold, and the purchase price was put in the seller's bank account? A. It was agreed—

Q. Isn't that true, Doctor? A. It is not so true. I will have to say a word to that. The agreement is A sells to  
B sugar. B cannot pay. Conditional sale. Property  
523 title remains in the seller until payment is made.

It is furthermore agreed that if B doesn't sell for cash, but sells for claim, that this claim shall be assigned to the manufacturer, to A.

And certainly if the money comes in out of the assigned claims, then this money goes to the producer.

Q. Doctor, I will ask you again, isn't it the fact that in this case B did sell the sugar and did receive payment, and the payment went into B's bank account? A. You skip one important point in the case. B sold the sugar. B acquired claims for the sugar. The claims were assigned to the producer, and when the money came in, the money was certainly given to the manufacturer.

Q. The money was not given to the manufacturer—and wasn't it given to B? A. Yes, it was paid to B; but as

soon as it arrived in B's possession, it had to be handed out, and the property, or this money, was considered transferred to the manufacturer.

Q. Ultimately B held property, didn't he? A. Yes.

Q. And at the time he held property, the money was in B's bank account, wasn't it? A. Yes.

Q. And is it not true that A asserted that he owned the money in B's bank account? A. Yes.

524 Q. And isn't it true that the trustees in bankruptcy said that all A had was a claim against B? A. Yes.

Q. And isn't it true that the trustees made the argument that A could not claim the proceeds, because they lacked full description? A. Lack of description, not of property, but of claims—of claims. That is something entirely different.

Q. But the res we are talking about is money in B's bank account? A. But the point is entirely in the case whether you can exchange claims, and exactly the situation is the same under the American law. If you take the Benedict case, and the Upton case, you see you have in the United States exactly the same situation, that while you cannot exchange personal property, but you can exchange claims.

For instance, in the Upton case, the money comes in, and the buyer receives the money; he has to hand in the money to the seller. And if he doesn't the money is the seller's money. But in regard to personal property, that is not the case.

I brought here, Mr. Burling, an article which brings together all these problems, especially to distinguish the case you just tell me, which shows this case has  
525 absolutely no bearing on the question of personal property; that in regard to personal property, the property has to be as specific as possible.

This article even criticizes the Supreme Court, it is so absolutely opposed to any compromise. And it says look

to the situation in claims; and they look here to 136, 100, and in similar cases where the Supreme Court permits the exchange of claims.

"As to personal property," says the article, "since 1934 no Supreme Court decision or any other court decision gives us any hope that this absolute and specific rule is changed."

Q. What is the citation of that article? A. The article is 138 Archiv für die Civilistische Praxis, which would be especially known to your experts, on page 350, to determine the specific property in cases of transfer of title and of assignment, compared.

Now, I don't want to take more of your time. I would otherwise say one more word of distinction.

Q. Well, now, addressing your attention to Mr. Boland's questions to you as to the nature of a usufruct, I am now talking in general terms and assuming that a usufruct has arisen in property. What rights does a usufructuary have in the property of which he is the usufructuary? A.

There we have to look to two points. The first is 526 is a statute which enumerates the rights of a person having a right in rem. called Niessbrauch.

Furthermore we have to look to the contractual relationship to the person establishing the Niessbrauch, and the Niessbraucher. As long as the property, the title, is not given up and sold to anyone else, there is a contractual relationship between the two parties governing even in the right in rem. So I have to tell you that, the provisions of the Civil Code govern, if the contract doesn't say anything. They always govern in the relationship of an assignee of a title only and, third, the Niessbraucher.

Q. You can't answer my question without looking at the particular contract which creates the usufruct? Is that right? A. Yes, I think certainly it would be a necessary point to consider. But certainly we can look in the provisions of the statute, which are to be found in the third part of the book.



Q. By the way, the third part of the book relates to rights in rem, does it not? A. To rights in rem.

Q. Perhaps we can go along a little faster, if you will let me put the questions. A. No; I could answer that very fast. We have here to look, since we have to do with  
527 shares, and shares in Germany are a bearer instrument, we have to look for the specific provision for bearer instrument, and that is Section 1081.

So it says that in such a case that joint possession shall be given to the title owners, in the Niessbrauchers, which is called the usufructuary.

Q. Let me interrupt you. First, is it clear that the usufructuary has a right in rem to the property? A. Yes, once the usufruct and the right in rem is established, he has the right in rem.

Q. And he has a right in rem? A. Yes; I prefer to call it "joint title."

Q. Is it not true also that the person having the usufructuary interest has a considerable voice in the management of the property? A. The statute again says that the Niessbraucher and the title owner of the bearer instrument are obliged to each other to cooperate for the purpose of collecting the due capital or to collect interests or dividends or to other measures required for the purpose of an orderly administration of the property. That is Section 1083.

Q. And then the case of shares, the usufructuary was entitled to vote the shares in so far as the vote was a matter affecting his usufructuary interest? Isn't that true? A. That is, in the German literature, very much a question of discussion. And as far as I can see,  
528 there is no decided case. But if you look in the books and the commentaries, you find, for instance, the position taken by Feine, saying that all the voting rights are with the owner.

And you see Staub's position, taking a middle view, saying that the owner has the right to vote for all matters

which have to do with income, and that the Niessbraucher has a right to do the voting in respect to the income.

Q. Didn't you misspeak yourself when you said the owner had the right to vote for all matters regarding income? A. No. The position, one, is that the title owner has all voting rights; and the second position is that the title owner has the rights for all measures which have nothing to do with income; while the Niessbraucher shall vote in regard to income. And the third position taken is that the Niessbraucher has all the voting rights.

Q. And you know, do you not, that Dr. Hachenburg in advising Wilhelm von Opel took the middle position? Isn't that what he says? A. He suggested to have it as a contractual provision. As I told you before, you have to look at the relationship between the parties, the contractual position. And he wanted to write that into the contract, so that the voting rights, in certain cases, shall be with the Niessbraucher parents, and in other cases shall be with the title owner.

Q. And the usufructuary could prevent the effective sale of the property, could he not? A. Certainly he can prevent the disposition of the property, if the right in rem is once established.

Q. You are a professor of comparative law, are you not? A. I am teaching comparative law for eight years.

Q. Now, Mr. Boland yesterday asked you something about the comparison between American trust law and German usufruct law. A. Yes, sir.

Q. During the life of a usufruct, will you compare the position of an American cestui que trust and a German usufructuary? A. First we have, under your own question, to limit the situation to the lifetime of the usufructuary. There, for instance, the title owner can dispose of his property, of his title right, at any time—sell it to whomever he wants. And such property is only limited by whatever rights the usufructuary or the Niessbraucher has.

Q. Will you explain what it is that the title owner under a usufruct can sell?—what economic value? A. Let me give you a case. I have a house and I make a Niessbrauch on my house. This Niessbrauch comes to an end—

Q. But my hypothesis is that the question— A. Now, pardon me—

520 Q. The life of the usufruct— A. Pardon me. But the economic value cannot be determined, without looking to what happened later. Certainly if I can sell my house, I will sell my house at the regular value of the real property, minus the value of this, I might call burden or lien on the property.

If the Niessbraucher is 78 years of age, the Niessbrauch will not mean much to the economic value of the house. If he is 24 and in best health, and the Niessbrauch is established for the whole life, it will mean much. Therefore I cannot give you a general statement.

Q. All right. In general, however, during the life of the Niessbrauch, will you not agree that the person having the Niessbrauch or usufructuary interest has a greater interest in the property than the American cestui que trust?—a very much greater interest? A. Would you repeat that? I didn't get the beginning of your question.

Q. Addressing yourself to the period of time during which a usufruct exists, will you not agree that the interest in the property of a usufructuary is very much greater than the interest of an American cestui que trust in the property? A. If you understand the interest with power,

certainly under the trust law the beneficiary cannot exercise any power over the property. While, as we have 531 just described, the Niessbraucher has the right in rem, direct rights for the purpose of administration and so on. If you understand power with interest, I agree with you.

Q. That is to say, over and above the interests of a cestui que trust, a usufructuary has the power to go-poss- session of the res; he may or may not, depending upon



which view of the German law you take, have the right to vote the shares, and he can effectively prevent the sale of the res? Is that not correct? A. If the right in rem is established, yes.

Q. Of course, and the right in rem is established if there is a usufruct. A. I think, Mr. Burling, as I say in absolute consistence with all the German writers, if we have to distinguish between *Eigentlicher* and *Un Eigentlicher*, if it is established as a contractual right, there is no right in rem. Just by the fact that the word *Niessbrauch* is used, I wouldn't like to decide whether there is a right in rem.

Q. Doctor, how is a *Niessbrauch* or usufruct characterized in the German Code? A. It is perfectly correct that the German Civil Code deals only with the right in rem.

Q. Thank you. A. You have, for instance, in mortgages, in all these cases, you might have contractual rights.  
532 You have chattel mortgages and real property mortgages by contract, where I say I will not sell my house until it is paid back.

Q. But, Doctor, is it not a fact that a usufruct is a right in rem under the German law? Doesn't the Code so provide? A. This answer I will never give, that the *Niessbrauch* under the German law is a right in rem. All I say is that the Civil Code only deals with the *Niessbrauch* as a right in rem. But aside from that, there exists a contractual right of the *Niessbraucher*.

Q. It doubtless can provide all kinds of contractual rights, Doctor. But a usufruct, under every authority, you can find, is a right in rem, isn't it? A. I can only answer that, that the Civil Code deals only with the right in rem. If I would see a case, I am not satisfied with looking on the word. I have to look on the law.

Q. The concept of usufruct comes from the Roman law, does it not? A. Mr. Burling, I am working in this field now for too many years; so I can really only tell you I

do not believe the usufruct comes from the Roman law. But my opinion is entirely unimportant. I believe it comes from the Germanic law. Other people might believe it comes from Roman law. But if you put me in the  
533 position of my own scholarly work, I come to the point where I can testify. Of course, that is my own opinion.

Q. You mean to say that the concept of usufruct is not well known in the Roman law? A. And I believe as an entirely different thing, because the Roman property law and the Roman title law is different from the Germanic, and the Germanic property law doesn't come from the Roman, only with the German title law.

It is so closely connected; but, as I said yesterday, there are two schools of the German; and I belong to the school of Martin Wolff, and we worked on this problem for many years. I wrote my Doctor's thesis on a problem very close to that, and I ~~cannot~~ say it comes from Roman law, because I don't believe it.

Q. Don't most authorities say that the German law is the so-called civil law? A. It is one of the civil laws, yes.

Q. And don't most authorities regard the civil law as stemming from Roman law? A. As I advised, if you would look at the book of Buckland and McNair, two of the greatest English scholars, you will see that these two great scholars come to exactly opposite results. But I know that generally you speak of civil law coming from Roman law. That is a very loose and incorrect  
534 language.

Q. I wonder if you would please answer my question, Doctor: Don't most authorities regard the civil law as stemming from the Roman law? A. No authority to-day takes this position.

Q. No authority? A. No, no authority in the field of history takes this position.

Q. That is to say, your position now is that every authority in the field of history as well takes the position that the civil does not come from Roman law? Is that right? A. Please, Mr. Burling, I can't answer that.

Q. I do wish you would answer the question yes or no.  
 A. I cannot say yes or no. I can only say that certainly some aspects of the civil law problems come from Roman law. That is all I can say.

Q. I will come to another point. Did you not testify yesterday that a devisen inlander, owning American dollars, or owning American securities, was under an obligation pursuant to the foreign exchange decrees of July, 1931, as amended, to report and to tender such American dollars or American securities to the German Reichsbank against a payment in marks? A. Yes.

Q. And under the German foreign exchange regulations, in the month of November, 1931, a devisen inlander  
 535 having dollars or American securities could not transfer those dollars or American securities to anyone except the Reichsbank without a license, could he?  
 A. Would you be good enough to repeat that?

Q. Yes, sir. Before I do that, I will ask to have marked for identification a photostat Reichsgesetzblatt, pages 421 to 425, for August 1, 1931.

(The photostat was accordingly marked for identification as Defendant's Exhibit No. 31.)

By Mr. Burling:

Q. I hand Defendant's Exhibit 31 for identification to the witness. Will you agree, Doctor, that that is a photostat of the Reichsgesetzblatt? A. Yes.

Q. Am I not right that that constitutes an executive order concerning foreign exchange control, promulgated on August 1, 1931? A. Yes.

Q. Now, will you turn to Section 3 and state whether the following translation is correct:

"Foreign currency or credits payable in foreign currency which have been acquired otherwise than in accordance with Section 2, may be transferred only, under a license in writing of the Office of Foreign Exchange Con-



536 trol, except where such assets are sold to the Reichsbank or one of the banks provided for in Section 2, paragraph 3."

A. Yes.

Q. Now, will you tell me whether the following is a correct translation of Section 4—

"Foreign securities not listed on a German stock exchange may be acquired for a consideration only under a license in writing of the Office of Foreign Exchange Control.

"Foreign securities not listed on a German stock exchange may be transferred only under a license in writing of the Office of Foreign Exchange Control, except where such securities are sold to the Reichsbank or one of the banks contemplated by Section 2, paragraph 3."

A. Yes.

Q. Now will you look at Section 12, please, Doctor. Is this a correct translation—

"Any transactions which violate any of the provisions of Sections 3 to 11 are void."

A. Yes, that is correct.

Q. Now I want you to assume a hypothesis. Assume that no gift took place and no agreement was executed between Wilhelm and Fritz von Opel on October 5, 1931.

537 But assume instead that on October 5 Wilhelm gave Fritz a power of attorney over the 600 Opel shares, and assume that Fritz left Wiesbaden on the 6th, went to New York, put the shares to General Motors, received back as attorney for his father either cash or General Motors shares or claims against General Motors. A. Yes.

Q. Assume that Fritz then returned in November to Wiesbaden, and that he and his father then drew up Plaintiff's Exhibit 5 and put the date October 5 on it. A. Yes.

Q. Would any title have passed on that hypothesis, from Wilhelm to Fritz? A. On this strict hypothesis, no title under German law would have passed.

Q. The fact that the instrument was pre-dated would be irrelevant, wouldn't it?

A. I mean, the fact that it bore the date October 5, would be irrelevant if the transaction in fact— A. If, on October 5, a full agreement would be made, an oral agreement would be made, and it would only be provided for to write it down later, then the agreement would be made on October 5 and would become valid by taking the property.

But if what you call pre-dated means the agreement was made on October 24 or November 10 or whatever, 538 and then written with the date of October 5, when the oral agreement was made in November, certainly the agreement would be void under German law.

Q. If an oral agreement had been made on October 5, that a gift would be made, title would not have passed to Fritz, would it, on October 5? A. It would have passed in the moment, as explained in direct, when the conveyance took place.

Q. What delivery would have taken place in October to Fritz? A. Suppose an oral agreement, as a mere matter of assumption, suppose an agreement is made on October 5; power of attorney is given; and it is said by the father to the son, "You go to America and you take this property, and it is our understanding that this property shall be yours as soon as you take it."

It would have all the elements of a gift promise and gift acceptance, and the contract would become valid by taking. And then it didn't become effective in November, but the moment the Opel shares are handed to the son.

Q. What is there in your hypothesis that would constitute delivery? A. The taking, if it is agreed between the parties, that Fritz von Opel shall go to New York and take the shares, the delivery is the taking of the shares in New York.

539 Q. And your view is that that constitutes delivery as a gift, even though Fritz von Opel puts the shares to General Motors under an instrument— A. I said, in

fact, I do not know. I only know as a matter of assumption. I say if the agreement is made on October 5, with the understanding that Fritz shall go to New York and go to wherever these shares are and take these shares, when the agreement would become fully valid, at the moment he takes the shares.

Q. Would he not have to take the shares in his own name, for that to be true? A. No. The question of the name, then you come to the problem of the power of attorney. I don't think that would be, in this perfectly hypothetical case, of importance. If the agreement is that father tells son, "I hereby make you the gift of these shares. Go to the bank where the shares are. Take these shares. And we agree that as soon as you take the shares, it shall be yours."

The contract would become valid the moment he takes the shares.

Q. And that is true, in your opinion, even though the son in taking the shares is acting under a power of attorney naming him attorney in fact for his father, and even though the proceeds of the sale of the shares are deposited in his father's bank account? A. The question of  
540 whether it was a gift or not a gift, is a problem of the internal relation between donor and donee.

The power of attorney has to do with the external, with the relationship with the third parties. And therefore it has absolutely nothing to do with this question.

I can tell you a case which I can only give to show it might be, to qualify this answer, because the word "pre-dating" might have so many different meanings. If it is just straight making an agreement on November 25 and writing October 5 certainly there is no agreement before November 25.

Q. We could get along much faster, Doctor, if you would listen to my question and answer it, and then let us go to the next question.

I do not believe you have answered my question. Do you assert that on the hypothesis that father and son made



an oral agreement on October 5; that the father did give the son the stock, and the father gave the son a power of attorney, and the son went to New York and put the shares to General Motors, acting under an instrument which called him attorney in fact for his father; and that he then deposited the proceeds of the shares in his father's bank account—would that constitute a valid gift to the son? A. I can only answer this question exactly if you tell me the words of the oral agreement. If you tell me that, 541 I can give you an exact answer.

Q. Supposing that the father and the son agreed on October 5 that a gift was to be made to the son which would be reduced to writing at a later date, and the instrument predated.

And supposing that the father then gave the son the power of attorney, the son went to New York and put the shares to General Motors under the power of attorney and deposited the proceeds of the sale in his father's bank account.

Would that constitute a valid gift to the son, at that moment? A. I would be perfectly—maybe just I didn't get it, but I didn't get the words of the oral agreement, the contents of the oral agreements. Because therefore depends my answer, what they actually said.

Q. The hypothesis is that the father says to the son, "I will give you the shares, but we need more time to arrive at a proper agreement. So you go now and sell the shares under the power of attorney. When you come back we will draw up the instrument and predate it so that it will look as if we entered into a written agreement today."

A. If such language is used, especially as the words "I will make you a gift", and there are questions open to be discussed, there is no complete contract and there 542 no title would pass. So it depends entirely on this point what the agreement is.

Q. But on my hypothesis title would not pass? A. No, on this hypothesis, title would not pass.

Q. And, in fact, title would not pass, assuming the oral agreement and the subsequent written agreement, unless every provision of the gift agreement were in fact agreed upon on October 5? A. Every essential:

Q. Every essential. But if there was any provision left open for further discussion or for further investigation of the law, then title would not pass? Is that true? A. Any essential provision. Understandings in regard to minor things would be different. But the essential thing that has to be covered, there has to be an oral agreement covering all the essential things.

Q. Assuming that there was no such oral agreement on the 5th, which covered every essential element, and assuming that the instrument which is Plaintiff's Exhibit 5 were executed in November and predated, then you have agreed that the gift would be void? A. Yes.

Q. And if it would be void, the title remained in Wilhelm von Opel, did it not? A. Since the property was not situated in Germany, but in the United States,  
543 it isn't a question I can answer as an expert on German law.

Q. The property was shares of Adam Opel, A. G. Is that right? A. It doesn't make any difference—

Q. Is that right, Doctor, whether it makes any difference or not? A. Yes.

Q. And Adam Opel, A. G. was a corporation existing under the laws of Germany, was it not? A. Yes.

Q. And under the hypothesis, Wilhelm von Opel was a citizen and resident of Germany, was he not? A. Yes.

Q. And under the hypothesis, Fritz von Opel was a German national, was he not? A. Yes.

Q. And under the hypothesis, both men were acting in Wiesbaden, Germany, were they not? A. Yes.

Q. Now, is it your position that if the father made a gift to the son, which was declared void, that is, the hypothesis again is that this happened in November. A. Yes.

Q. And that was declared void by Section 12 of  
544 the decree of August 1, 1931, the German Court would nevertheless say, "We don't know who has title"? A. The German Court?

Q. That is right. A. So far as the question what the German Court would say, the German Court would not recognize transfer of title.

Q. That is what I am asking you, as a German expert. And under the German law, the title remained in Wilhelm von Opel? A. Yes, under German law the title remained in Wilhelm von Opel.

Q. Thank you. Now, you were asked by Mr. Bohand yesterday about how, assuming that a right arose under the usufructuary provision in Plaintiff's Exhibit 5, how such a right might cease to exist. I want you to direct your attention to the hypothesis that a valid usufruct in Wilhelm and Marta did arise under Plaintiff's Exhibit 5, coupled with delivery of the key to Hans Frankenberg.

A. It is again your assumption that that is in Switzerland?

Q. In Zurich, yes. A. Then the question of how this right in rem would be waived or became terminated, is a matter of Swiss law.

Q. A German Court would say that it could not  
545 determine— A. It could determine it, but it would look to the Swiss law for certain information.

Q. I see. A. Because if the property is situated in Switzerland, under German law—and I can only answer you under German law what the result would be, if it is applicable.

Q. Let us examine that a little. I will vary the hypothesis. Supposing the alleged delivery had taken place in Wiesbaden instead of Zurich. A. And the property is situated in Wiesbaden?

Q. That is right—a safe deposit box in Wiesbaden, rather than a safe deposit box in Zurich. Then how would it be possible for the usufructuary right to come to an end?

A. Section 1604. For the purpose of abandonment of Niessbrauch, the statement of the Niessbraucher is sufficient, the statement that he waives or abandons the Niessbrauch is sufficient.



Q. Again assuming that the property was situated in Wiesbaden, the usufructuary had a right in rem in the property, did he not? A. If the right in rem is established.

Q. Under the hypothesis that I have given you, Wilhelm and Marta von Opel would have a right in rem in the Uebersee shares.

Now, again assuming the property to be situated  
546 in Wiesbaden, they could not dispose of or transfer that right in rem to foreign securities, without a license, could they? A. You can never transfer a Niessbrauch. The Niessbrauch is strictly a personal right of the person who has this right. It can never be transferred or assigned.

Q. I don't mean to quibble with you, and I hope that is reciprocal. Dr. Kronstein, if A has a Niessbrauch in property, and B is a title holder, and A abandons the Niessbrauch— A. Yes.

Q. That transfers that interest back from A to B, doesn't it? A. Certainly. Whatever interest the beneficiary had is now merged with the title holder.

Q. So that that interest moves from A to B and is transferred, isn't it? A. Yes.

Q. And you couldn't transfer an in rem interest in foreign securities without a license, could you? A. You could not, I suppose, of foreign securities—exactly your question, you could not do that. You couldn't dispose of rights in foreign securities without license.

Q. So that Wilhelm and Marta von Opel could not have abandoned their usufructuary interest without a license, could they?—the usufructuary interest in Uebersee, a Swiss corporation? A. In my opinion, this  
547 transaction would require a license.

Q. Thank you. A. But there are other opinions to be found.

Q. I am asking your opinion, Doctor.

Mr. Gallagher: Your example is with the property in Wiesbaden? Is that not correct?

Mr. Burling: So far. I am coming to the next step.

By Mr. Burling:

Q. And if they didn't have a license, and if they purported to abandon the usufruct, that purported abandonment would be void under Section of the decree of August 1, wouldn't it? A. Yes.

Q. Now, then, you have had some judicial experience in Germany? A. Yes.

Q. What is your opinion of what a German Court would have done if the situation had been that the property, the shares of Uebersee, were in a box in Zurich and the key was in the hands of Wilhelm's agent in Zurich? Then could Wilhelm and Marta, under German law, effectively transfer an interest in foreign securities? A. Pardon me.

Mr. Burling: Please don't use the word "transfer" of securities, because they could not transfer these securities.

Q. Isn't an abandonment a transfer? Wouldn't it transfer from A to B? A. By waiving the right, the right coming at the end.

Q. And by the abandonment, the interest in the property moves from Wilhelm and Marta to Fritz, doesn't it?

A. Well, if you want to call it that it moves, yes, sir.

Q. Isn't that a transfer? A. No, it is not a transfer, because the statutes say a transfer can be done—I am not too much impressed by the words of the statute—but we can perfectly agree that we have the right, and by the German courts it would be considered void under the foreign control.

Q. So there isn't any doubt in your mind, is there, that under the hypothesis that a valid usufruct arose and that the shares were in a box in Zurich and the key to the box was in the hands of Wilhelm's agent, then Fritz and Marta

could not waive or abandon the usufruct without a license?

A. Under German law, no.

Q. That is what you are testifying about, as an expert in German law. And if they purported to waive, under the hypothesis I have given you, that purported waiver  
549 would be void? Isn't that true? A. Yes.

Q. Is it your opinion, Doctor, that in considering the question of whether a waiver had taken place, a German Court would take into consideration the fact that the two people who had the capacity to waive, Wilhelm and Marta von Opel, had both testified in the particular proceeding and neither of them had mentioned—and this is a hypothesis—neither of them had mentioned that waiver? Would the fact—

Mr. Boland: I didn't get your question, Mr. Burling. Would you mind restating it?

Mr. Burling: Yes. My question is—

Mr. Boland: What is your assumption, again, please?

By Mr. Burling:

Q. My assumption is that a German Court is endeavoring to determine the fact whether or not Wilhelm and Marta von Opel waived or abandoned their usufruct, of course again assuming a usufruct validly arose.

My question is, on the further assumption that neither Wilhelm nor Marta von Opel testified—and both of them were called in the case, but neither testified in any way—that they had in fact waived, would the Court consider the failure of the two witnesses who could possibly testify to  
550 a waiver, to testify to that effect, as being an important fact?

Mr. Boland: I object to that question, Your Honor. I don't see that it is necessarily connected to anything Dr. Kronstein has testified to.



The Court: I am a little afraid it may be outside the German law, Mr. Burling.

Mr. Burling: May I have a moment, please?

The Witness: Your Honor, I would like to have the right to make a little statement. Mr. Burling has, I believe, attacked my honor. He made an implication which I cannot accept silently. I believe that Your Honor cannot have the impression that I made biased testimony.

The question in regard to my payment is especially, I believe, improper, since the Government knows very well that I do not accept more than a Government expert; that I took this case and I told both parties that I want to be perfectly—

The Court: Mr. Kronstein, there isn't any testimony reflecting on your honor before me, and I assure you I won't draw any conclusions from it. So you needn't bother about that.

Mr. Burling: I would like to state, Your Honor, my purpose in seeking to find out about the funds related to something wholly unrelated.

The Court: I got the drift of that.

551 He was talking about another point, on the money.

Mr. Boland (to Mr. Burling): Have you finished your questioning?

Mr. Burling: May I have just another moment, Your Honor?

I have no further questions.

### *Redirect Examination*

By Mr. Boland:

554 Q. Doctor, are you familiar generally with the foreign currency regulations which were in effect in Germany in 1931? A. Certainly.

Q. Would you give us a slight detail on your familiarity with such regulations? A. The law practice between 1931 and November, 1935, when I left, was unfortunately up to 90 per cent connected, at least in my office, connected with foreign exchange control.

Q. So that you would say you were extremely familiar with the foreign exchange regulations? A. I don't want to say "extremely familiar". I am very well familiar with the problem.

Q. Would you direct your attention again, Doctor, to Plaintiff's Exhibit 5, and state whether or not there is anything set forth in that agreement which violates in any way any foreign currency regulations which were in force either as of October 5, 1931, or—

Mr. Boland (to Mr. Burling): What date are you using in your assumption? November 24?

Mr. Burling: No; my assumption is a date after Fritz returned—November 9.

By Mr. Boland:

555. Q. Or on November 9, 1931? A. This agreement written here was perfectly lawful under foreign exchange control and, as far as I can see, until the control statute number I believe, 53, of the Military Government, overruled the currency statute and substituted a new statute for it.

Q. And would you explain to the Court exactly why this was legal, under German foreign currency regulations?

A. The object of the gift were German shares, shares of a German corporation. Under German law, shares are personal property. The rules of currency decrees do not cover this property, and for good reasons.

Q. So that the main factor in this case is that it deals with the transfer of German bearer shares? A. German bearer shares.

Q. And that is why it was not within the foreign currency regulation? A. Yes.

Q. Addressing your attention now to Plaintiff's Exhibit 7, which purports to be a letter from Dr. Hackenburg, in which he discusses the problem, what conclusion does he come to, Doctor? A. The same conclusion, that the procedure is lawful.

Q. Thank you. Yesterday, during Mr. Burling's assumptions, he asked you a question as to taking the 556 gift agreement itself, October 5, 1931, as to whether the only thing left which would preclude the immediate establishment of a right in rem, as he put it exactly, "No other defect except delivery remained to the establishment of an immediate right in rem"? A. Yes.

Q. I think ultimately your answer was yes. That answer is based upon the assumption, is it not, that you interpret the language of the contract to create an immediate right in rem; that the intent of the parties was to establish an immediate right in rem? A. Would you repeat this question? I didn't get the question.

Q. Mr. Burling asked you whether on the basis of the gift agreement itself, whether the only defect to the immediate establishment of a usufruct was delivery, and I believe your answer was yes. A. I said, without this conveyance contract, the Dinglicher Vertrag, there can be no Niessbrauch. If there would be such a conveyance in the contract, then I wouldn't suggest that they here establish rights in personam, but I would certainly suggest they establish a right in rem.

Q. Yes, sir. Yesterday Mr. Burling also gave you the case of the Rembrandt. I am not sure who gave the Rembrandt to whom, but at least it was in issue for quite some time. And as I recall the case, it was that of the donor who gives the Rembrandt to a donee, with the 557 understanding that the picture will return upon the happening of certain conditions. A. Yes.



Q. Under such a case, Doctor, and before the happening of the condition, would the donee be free to transfer good title to a third person? A. Yes.

Q. And where does that leave the donor? A. He would have a claim for damages.

Q. He would have merely a claim for damages? A. Yes.

Q. So that until the happening of the condition, the donee has full power, full title, and full power to dispose of the particular object of the gift? A. Yes.

Q. Do you believe that the Rembrandt analogy has any relationship to the case at bar, that is, using October 5, 1931, Plaintiff's Exhibit 5? A. If you take this contract, you have the provision that in case of Fritz von Opel's death without legitimate issue, and the fact that he predeceases his parents, the gift will become void.

You have furthermore this provision that the 558 shares should be sold or exchanged against other property.

You have furthermore no right in rem established by the usufruct.

And if you take that all together, it was a completely uncertain and indefinite and unspecified property.

If I would take the position, the other position, because in my direct I tried to interpret the contract, to give the Opel parents as many rights as possible under this language, and I suggested that this provision had established a right against Fritz von Opel's estate in case these two contingencies occur, for the return of the remainder.

If you interpret this section here as having in effect as a right in rem, then it has absolutely no effect the moment the first shares are sold, and it loses any effect then whatsoever.

That was the reason I tried in my interpretation to give the most possible number of rights to the people who make this contract, with their intention, following their intention.

I made this suggestion, as I believe, in the interests of Mr. Burling.

Q. So that your testimony is to the effect that this does not affect the passage of title? A. No.

Q. And, number two, that it merely creates a right 559 in the donor in the estate of the donee, if the son predeceases both the mother and father, and dies without legitimate issue? A. Yes, sir.

Q. I believe it has been stipulated that the father has died. Assume, Doctor, it is established in the course of this case that the mother, the co-donor, so to speak, is 77 years old, and assuming further that the son is in his forties, as a German lawyer and looking at this gift instrument what value would you attribute to the rights of the mother at this particular time? A. I am afraid—

Q. I don't mean dollar-wise, Doctor. A. I am afraid it goes a little bit beyond my possibility of an expert's testimony.

Q. I think we both agree they were not very much.

Mr. Burling: I would like to object, on the ground that the relevant date is the date of vesting, and not today.

The Court: I think that is true.

Mr. Boland: That is all, Your Honor.

Mr. Burling: I have two or three questions, if Your Honor please, arising out of the redirect.

The Court: Very well.

564 Mr. Gallagher: I would like to now offer the vesting orders, which have been in custody of plaintiff's counsel. Give them different numbers.

(The documents referred to were marked Plaintiff's Exhibits 48-A to 48-E for identification.)

Mr. Gallagher: Mr. von Opel, take the stand.

Thereupon—FRITZ VON OPEL was called as a witness and, being first duly sworn, testified as follows:

*Direct Examination*

By Mr. Gallagher:

Q. Mr. von Opel, you were in the courtroom the day that this proceeding began; were you not? A. Yes.

Q. At that time you heard Mr. Burling—

The Court (interposing): You better give his full name.

By Mr. Gallagher:

Q. Your name is Mr. Fritz von Opel? A. Yes, sir.

Q. And you are the owner of the stock of the Uebersee Korporation? A. Yes, sir.

Q. You were in the court on that opening day of this proceeding, were you not, Mr. von Opel? A. Yes.

565 Q. And you heard Mr. Burling's opening statement at that time; is that true? A. Yes, I did.

Q. I would like to refresh your recollection for a moment as to what he said, on page 28 of the opening statement:

"As I have said, the regulation came out on October 2nd. On that very same day Fritz went to Mannheim and consulted Dr. Hachenburg—and I agree with Mr. Gallagher's statement that he was one of the most eminent lawyers at the German Bar at that time. He agreed to prepare a draft of an agreement which would put the legal title in the name of Fritz von Opel. And he did mail it the next day, October 3rd. And the calendar will show that October 2, 1931, fell on a Friday. So Hachenburg mailed his draft on October 3rd, on a Saturday; and the presumption would be that it was received in Wiesbaden Monday morning, October 5. He also said he would look up some tax problems associated with this transfer."



"Incidentally, under the schedule of the escrow agreement, Wilhelm von Opel was to receive \$3,700,000 if he put the stock to General Motors at this time, and I think it is not disputed that that sum equalled approximately half of the entire fortune of Wilhelm von Opel.

566 I might interpolate: That is disputed.

"It is our contention, of course, that the father and the son both understood it was not a gift of half of Wilhelm's estate to the son, but merely that this was a way in which the family was going to go around the foreign exchange regulations, by purporting, by feigning a transfer to the son, so that he would hold it immune to the foreign exchange regulations.

"We will prove through the words of Fritz von Opel himself that he and his father were on exceeding bad terms at the time of this gift and, in fact, at all relevant times, the father and son were not at all friendly.

"The significance of the days of the week is that although Hachenburg was one of the most distinguished lawyers of the German Bar, and said he would report on tax matters on Monday—and here my friend I think was in error; it was not Fritz von Opel on behalf of his father, but Wilhelm von Opel, who cabled the general counsel of General Motors, asking if he would be in New York, and saying that either the father or the son would come to New York, sailing the following Wednesday, to confer with him.

567 "We contend that the agreement which bears the date October 5 was not signed on that date, but that, on the contrary; what happened was, that Hachenburg's letter was received on Monday. They knew that the Europa was sailing from Bremerhaven two days later, on October 7, and that it would be necessary for either Fritz or his father to leave for Bremerhaven the very next day, on the 6th, to get on the boat.

"So they knew there just wasn't time enough to look into these problems."

Now, Mr. von Opel, for how many days did you and your father discuss Dr. Max Hachenburg's suggestions?

A. We discussed it for several days.

Q. I will ask you: On the date October 2nd, three days before the Hachenburg draft, Plaintiff's Exhibit 8 was received, you were given Plaintiff's Exhibit 9, which the Government has admitted was given to you on that date, on October 2nd; is that not a fact? A. Yes, it is.

Mr. Burling: I object. I did not object during the examination in chief of Dr. Kronstein to the fact that leading questions were used because of the complexity of the problems. I do not think even if this is an equity court that Mr. Gallagher should be allowed to lead—

Mr. Gallagher (interposing): I will reframe the question.

568 Mr. Burling: This is not a hostile witness.

The Court: I agree with you on that.

Mr. Gallagher: I will reframe the question.

By Mr. Gallagher:

Q. It has been stipulated by the Government, Mr. von Opel, that Dr. Max Hachenburg gave you this draft, Plaintiff's Exhibit 9, on October 2nd, which they state is the Friday preceding the Monday on which Plaintiff's 5 was purportedly executed.

I will ask you: Did Dr. Hachenburg give you that letter?

A. Yes; certainly.

Q. That draft? A. Yes.

Q. Now, I will ask you: Did you have any discussions with your father within the light of the suggestions contained in that draft? A. Yes; definitely.

Q. Did you discuss—at what time did you discuss them?

A. I came home in the evening of the 2nd. It is only about an hour or an hour and a half drive from Mannheim to Wiesbaden. So that same night I discussed it with my fa-

ther, also the next day and the following day, what is called in English, fundamental considerations forming the basis of Dr. Hachenburg's final draft.

569 Mr. Gallagher: I would like at this point if Your Honor would refresh your recollection as to 9 for a moment, and then I will commence with Mr. von Opel's interrogation. Will you compare it with 8? 8 is the one received Monday, and which is stipulated by the Government. 9 is the one they themselves stipulated was given to Fritz three days before, and which has been testified to by the expert as containing the same information as in Plaintiff's Exhibit 7?

You will note that Dr. Max Hachenburg in the second line states: I gave the memorandum to Fritz.

The Court: Go ahead, Mr. Gallagher.

By Mr. Gallagher:

Q. So, if I understand you correctly, your father and you had at least two days and an evening in which to discuss the suggestions of Dr. Hachenburg, which appeared later in a formal draft of a deed of gift; is that correct?

A. Yes.

Q. Now, to return, Mr. von Opel, where were you born?

A. In Russelsheim.

Q. In what year? A. May 4, 1899.

Q. Where is your present residence? A. St. Moritz, Switzerland.

Q. When did you acquire that residence? A. I bought the house in 1933 and rebuilt it, and made St. Mo-  
570 ritz my permanent residence in 1934.

Mr. Ingoldsby: A little louder, please.

By Mr. Gallagher:

Q. A little louder, Mr. von Opel.



When did you give up your residence in Germany? A. In December, '29, when I left for the United States.

Q. Of what country are you a citizen? A. Liechtenstein.

Q. And when did you become a Liechtensteinean citizen? A. In November, 1939.

Mr. Gallagher: Now, Your Honor, I wish to offer a stipulation between the defendant and the plaintiff with respect to one, Dr. Joseph Henggler, who represented Mr. von Opel in obtaining Liechtenstein citizenship, and the stipulation states that if Dr. Henggler had been called as a witness, which we proposed to do in Europe, this is the testimony he would have given.

Will you identify that?

(The document referred to was marked Plaintiff's Exhibit No. 49 for identification.)

Mr. Gallagher: This is Plaintiff's Exhibit No. 49. Would you look at that briefly, Your Honor?

I now offer that, Your Honor.

Mr. Burling: I think I stipulated that that witness would so testify but I didn't stipulate as to the admissibility.

Mr. Gallagher: That is correct. The Judge will see that, Mr. Burling, in the stipulation.

Mr. Burling: However, I make no objection.

The Court: All right.

(The document previously marked for identification Plaintiff's Exhibit No. 49 was received in evidence.)

Mr. Gallagher: I might state, Your Honor, it has been stipulated further that he is a Liechtenstein citizen.

By Mr. Gallagher:

Q. Where was your domicile at the time you acquired or became a Liechtenstein citizen? A. In Switzerland.

Q. Did you ever file with the proper authorities in Germany any application to retain your German nationality?

A. No, I did not.

Q. When did you come to the United States for the last time? A. In the spring of 1940.

Q. And would you state for what reasons you came to the United States at that time? A. I had several reasons.

Q. A little louder, please. A. I had several reasons.

One of the reasons was that in 1939 I had received a certain mobilization order, meaning that I had to report back to Germany for military service. I was at this time not a Liechtenstein citizen, and I was very much afraid that if the German armies would enter into Switzerland that I might get caught and shot.

This danger was especially great in the spring of 1940. At this time the so-called phony war was going on, and the Germans were sitting in front of the Maginot Line, and everybody would expect they would go through Belgium or Switzerland, around this line.

Q. After you arrived in the United States in 1940, what work did you engage in? A. I came practically every year once or twice to the United States. In the summer of 1939 I could not come. I had a compound leg fracture, so I was already a year late, and I was on the board of several American corporations, and I wanted to oversee this business.

Q. When you speak of several American corporations, are you speaking of corporations owned, the stock which was owned by Uebersee? A. Yes, I do.

Q. Did you limit your work to these corporations? A. No. I began some new enterprises. I established a small finance corporation.

573 — Q. What was the name of that? A. Westminster Finance Corporation, and I also had an interest in a machine shop.

Q. Would you state the name of that? A. It was called the Ergo Machine Works.

Q. Will you state what product or products did the Ergo Machine Works make? A. At the time I acquired it, they produced molds for plastic manufacturing, and it had subcontracts for airplane manufacturers, especially for aeronautics.

Q. Were those products ultimately for use in plane production? A. Yes, you can say that. In the beginning, I think most of it went to England.

Q. Were there any patents involved in the Ergo Machine Works proposition? A. I gave them one of my patents. I at this time had designed a fastener. I had read in the newspapers that fasteners were a bottleneck.

Q. What do you mean, a fastener? A. Small metal pieces where several sheets of metal, flaps, or cowlings, are fastened together, and on every airplane they have several hundreds of them.

Q. You designed that? A. Yes, and at this time only one fastener existed, the Tors fastener, invented by  
574 a Russian who came here in '28, and, in my opinion, it was poorly designed and expensively designed, and I thought I did it somewhat better.

Q. What was done with that fastener patent? A. I offered it to the Air Force, and it was taken on a shake-down test in Wright Field, and it was a 40-hour test, and it stood up as well as the other one, and it was so much lighter and less expensive, and they wanted me to go ahead with it and manufacture it.

Q. Do you know whether or not these fasteners were used in airplane production? A. The Air Force wanted Ergo to build some of them. In the meantime, I had been interned, and Ergo had been taken over by the Alien Property Custodian, and they refused to cooperate, and the fastener was then built by the millions by car-manufacturing and bus companies.



Q. What happened to the Ergo Machine Works that you are speaking about? Is that still active today? A. No; that was liquidated.

Q. Who was it liquidated by? A. It was liquidated. I never could quite understand why it was liquidated because at this time I was working on another process, a torch process, in cooperation with the War Production Board, and they even had given me A-1 priority so I could build my research equipment, and the tests 575 came out better than we thought, but in the meantime the APC took over and sold the whole thing on the auction block, and that was done over the protests of the War Production Board representatives.

Q. Now, do you know how much they got for it? A. I had invested, if I remember correctly, about a hundred and ten or a hundred and twenty thousand dollars in that, and they got about fifty thousand dollars out of it.

Q. What was your estimate of its real worth? A. I would not have sold it for half a million because it was a patent matter pending, and we had running contracts, and we had just begun to make profits.

Q. Now, Mr. von Opel, you stated the fact you were interned.

Do you remember approximately when you were interned? A. In February, '42.

Q. While you were in internment, did you continue your patent research? Did you go into it immediately? A. Not the first few months.

Q. Was there any reason for failing to do that? A. Yes, because we were kept in quite miserable circumstances.

Q. Where were you kept? A. In Miami, in the so-called Professional Building. It was only small rooms and 60 or 70 men in it, and it was rather unpleasant there.

576 Q. When did you, or did you commence further patent research? A. I was then transferred to Canton, Texas, and there I had room for myself, and I could go to work again.

Q. Did you remain in Texas thereafter or were you again transferred? A. Only for about half a year or, I think, about approximately a year.

Q. Where were you transferred then? A. Then I was re-transferred to Miami.

Q. While you were in Miami what work did you do while you were in internment? A. I worked with the Army Intelligence in Miami.

Q. Who did you work with? A. I remember in particular a Colonel Mettler. He was an Ordnance officer, and there was some work I was again interested in.

Q. In this connection, did you have occasion to confer with scientists and others at the request of the Army?

A. My work consisted of, so to say, of several parts, partly covering new devices, partly they gave me a problem and I worked on it, and in other instances they had solutions and they asked me to review some and give my opinion on it.

Q. Now, did you continue to remain in Miami or  
577 were you again transferred? A. The Army tried to keep me there, but the Immigration authorities wanted to send me back to Texas, but after investigation it was found it wasn't quite safe there, and I wasn't transferred.

Q. Why weren't you safe there? A. It was a Nazi camp.

Q. The Texas camp was a Nazi camp? A. Yes.

Q. Where were you transferred? A. I was transferred to New Orleans.

Q. What kind of camp was it in New Orleans? A. It was called, a so-called Jewish camp because most of it were German refugees.

Q. After your release from internment, did you do any particular work for the Army? A. Yes, I did.

Q. What was it? A. They asked my opinion on some matters concerning the German automobile industry, and

industrial rebuilding in general, and I wrote several memorandums for them.

Q. Mr. von Opel, where were you educated? A. I went to school in Meintz, in high school, and as you call, as you say junior college, and then I went to technical hochschule, which means the Institute of Technology  
578 in Darmstadt.

Q. What degree? A. I was a graduate of mechanical engineering.

Q. What work was your family engaged in? A. My family, four branches of the family, originally four brothers, owned the Opel Automobile Company.

Q. What was the Automobile Opel Works? A. It was the biggest in Germany, if not the biggest concern in Europe, and after I had gotten in, the biggest bicycle plant in the world.

Q. Were you ever connected with the Opel Works? A. Yes; definitely.

Q. For what period of time? A. It is hard to say because we were living right in the factory grounds. The factory got larger and larger and built around the house of my father,

Q. And the house was in the center of the plant proper? A. Yes, sir.

Q. While you were in the Opel Works, what were your duties in the plant in general? A. While I was still in high school, my father asked me to go through the regular routine of work, up through the ranks, and I was an apprentice there, and kept busy with all kinds of machine tools, and learning the trade, and even before graduation, I was already connected with the factory.

579 At first I had a position as foreman, and then superintendent, and later on as manager. I started in the factory plant, in the bicycle plant, and my father offered for me to go to the body division, but I could see at that time in the bicycle division, it was kind of neglected as part of the factory—



Mr. Burling (interposing): We cannot hear the witness, Your Honor.

Would you speak a little louder?

Mr. Gallagher: Speak louder, please.

By Mr. Gallagher:

Q. Now, do I understand you then, that the nature of your work took you into all branches of the factory? A. In the beginning I was mostly in the bicycle plant, busy with the bicycle plant, and at the time I took over we made 306 a month, and after two years, it was 1,000, and after four years, 3,600; twelve times the former production.

Q. Did you also work in the automobile part? A. Yes, sir. My father used me as a trouble shooter, so to say, in all kind of things, and later I was going to the truck division, and later on as designer of the big passenger cars, which was a special division.

Q. Now, in addition to the work in the plant proper, did you do any work for Opel outside of the plant? A. Racing. My family had always done it in Germany. It is different from here now nobody pays any attention to any racing, but all through Europe the automobile sales are based upon racing research, and we had to go into that, and this kind of thing at this time.

Q. Did you operate Opel cars in these races? A. Yes, sir.

Q. The Opel name appearing on it? A. Yes; certainly.

Q. In addition to the standard type car, did you develop or drive any other type of car? A. I designed the first eight cylinder in line. It was quite a success at the Berlin exhibition of 1928.

Q. Did you have anything to do with rockets? A. Yes. I may say so. I started this whole development, more or less. I was the first one to build it into an automobile, and the first one to design and fly a rocket airplane.

Q. Did you drive a rocket car, too? A. Yes, and I also built the first jet engine.

Q. The first jet engine? A. Yes.

Q. Now, Mr. von Opel, directing your attention to the year 1928, what was the legal setup for the plant? Was it a partnership or was it a corporation? A. Up to 1928 it was a partnership. In 1928 Adam Opel was incorporated with 60,000,000 reichsmark capital.

Q. Now, after it was incorporated, what position did you then have with the plant? A. I was what is called—

Mr. Burling (interposing): Before you show it to the witness, will you show it to us?

Mr. Gallagher: It is in German.

Mr. Burling: I assume I know what you are going to use it for, but I must object to it with the name von Opel struck out.

Mr. Gallagher: I haven't offered it. I am going to ask the witness to identify it.

By Mr. Gallagher:

Q. Will you state what this document is, Mr. von Opel?

A. Yes, sir; the so-called notarized copy of the registration, the corporate registration of the State of Prussia, and it refers to the Adam Opel Korporation in Wiesbaden.

Q. Does it have any reference to you in there? A. Yes. It says: Vorstand, which means manager, and it states my name, and I was the only person, and I could sign for the enterprise solely.

Q. What was meant by that title that you mentioned in German, comparable to the United States? A. It is called vorstand, which means sole manager here,

582 Mr. Burling: I move to strike out the testimony on the ground that a description of the document

is unnecessary if it is admissible, and improper if it is inadmissible. Fritz von Opel is underlined in red, and it is struck out.

By the Court:

Q. Tell me from your memory the position you had and what it meant. You remember what position you held at that time? A. Yes.

Q. Just tell us. A. Vorstand. I was Vorstand for Adam Opel, A.G.

• My father at the time was chairman of the board of directors, and my uncle also, but under German law no member of the board can be an officer of the corporation, and I was the sole officer.

By Mr. Gallagher:

Q. What was your salary at this time? A. This is the year 1928 and '29, and I got 4,000 marks a month, and three-quarters of one per cent of the net earnings.

At this time the corporation was making between twenty and thirty million reichsmark, and my total income was about two hundred to two hundred and fifty thousand marks.

Q. At that time did you have a contract with the plant? A. Yes, I had a yearly contract.

Q. A yearly contract? A. Yes.

Q. Now, in '28, were negotiations commenced with General motors to sell the Opel plant? A. Yes.

Q. And did these negotiations result in a sale? A. Yes; after half a year.

The Court: 1928?

Mr. Gallagher: No; this will be '29. That was the sale. They commenced in '28, and the sale was in '29—April of '29, it has been identified.



By Mr. Gallagher:

Q. Now, at the time of this sale did you have any conversations with your father? A. Yes; I had many conversations concerning the sale.

Q. What was the nature of those conversations? A. I was the only one of the entire family who was against the sale.

Q. Can you state the reason why you were against it? A. Because it was my life business. I was educated for it, and I certainly didn't want to lose it.

Q. What was the result of the conversations you had with your father? A. He at the time told me he 584 would later on, if I so desired, he would set me up in business independently, but the trouble was, in this sales contract I was excluded from using my own name. That was part of it, so the Opel name could not be used by the Opel family in any competitive enterprise with General Motors as for a period of ten years.

Q. So, therefore, you were excluded from using your name to advertise products? A. Yes.

Q. Well, after General Motors had assumed ownership and control of this plant, what position did you occupy then? A. I still was manager, and then an American was appointed co-manager, and we were assigned jointly.

Q. Was this a satisfactory status from your viewpoint? A. No.

Q. Will you state why not? A. It was always a clash of opinions.

Q. Do you remember any? A. The American management had entirely different viewpoints on all kinds of things, but to give you a small example: At this time General Motors promoted Opel motors, and the very first thing they did was to scrap the eight cylinder in line because they thought that the design, because of heat expansion and so forth, was no good.

Q. We have eight cylinder in line motors in many  
585 cars today? A. Yes, you could say so.

And they also changed the policies in regard to the bicycle dealers, and after three or four years, this whole business was entirely wrecked, and they had to give it up.

Q. Did you have any discussions with your father about these difficulties with the General Motors staff? A. Yes; certainly. He had the same difficulties.

Q. What was the result of these discussions with your father? A. I told him that I would like to quit right away, and start a shop of my own somewhere.

Q. What was his reaction to that? A. He insisted that I should try to go on, and I would get my position back after a certain time, and it was just a matter of time of getting along with them, and I should go to America and study their methods, and if I still would find and decide that would not do, I would not like to go back in the corporation, he would then provide for me.

Mr. Gallagher: Would you like to recess at this time, Your Honor, because we are now about to set sail for America.

The Court: All right.

(Thereupon at 12:30 o'clock p.m., the luncheon recess was taken until 2 o'clock p.m.)

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#### AFTER RECESS

(The trial was resumed at 2 o'clock p.m., at the expiration of the recess.)

Accordingly, FRITZ VON OPEL resumed the witness stand pursuant to the luncheon recess and testified further as follows:

*Direct Examination (Continued)*

By Mr. Gallagher:

Q. I think when we left for the recess, that you had stated after further discussions with your father in 1929, you left for America.

Let me ask you this: At that time were you married or single? A. I just had married in October, '29.

Q. Where did you live with your bride at that time? A. I took an apartment in Wiesbaden.

Q. And after you left for America, did you maintain that apartment? A. No; I gave it up.

Q. Did you maintain any home there? A. No.

Q. Did you file any papers with respect to your departure? A. Yes; certainly.

587 Q. What was the nature of those papers? A. It is called abmeldung, meaning registration of departure.

Q. Does that state you are leaving the country, or what else? A. It says—you always have to register when you move from one place to the other in Germany, but abmeldung means I was registered for leaving for a foreign country.

Q. When you arrived in America, where did you live? A. I worked in different units of the Chevrolet Corporation. First I worked in the foundry in Saginaw, then in the forging plant, in Detroit, and in Toledo, and also the motor plant in Flint, Michigan.

Q. Did you maintain an apartment during your stay in America? A. No, I was living in hotels.

Q. Living in hotels? A. Yes, sir.

Q. How long were you in America in toto? A. For about a year.



Q. After you left America, where did you go then? A. I went to Antwerp, Belgium.

Q. While you were in Antwerp, did you have occasion to go further to your father's home and have discussions with him? A. Yes. I was working with the General Motors Export Division in Antwerp, and I was staying in Brascard; near Antwerp. I rented a house there for a year.

Q. Where was your legal residence at that time? A. My legal residence was in Belgium. I had quite some difficulty in getting it.

Q. You stated you had some discussions with your father during the period that you were living in Antwerp?

A. Yes.

Q. Directing your attention to the spring of 1931, and this is shortly after you had returned from America, did you have any discussions at that time with respect to your father's statements to you in 1929 about staying with General Motors for a while and if it didn't work out that he would set you up in business?

Mr. Burling: I again request that counsel not lead the witness. After all, this is Mr. Gallagher's witness.

Mr. Gallagher: Strike the question.

By Mr. Gallagher:

Q. You stated you had discussions with your father during the spring of 1931? A. Yes, sir.

Q. Will you state the nature of those discussions? A. It was along that same line, and I told him now another year has passed, and I really think it is getting time I get settled for myself.

Q. As a result of those discussions was any action taken by you? A. Yes.

Q. Will you state what that action was? A. At this time I wanted to start there an international patent exchange, swapping patents between Europe and America, and a

friend of mine was also interested in it, and I acquired an option on a corporation for this purpose.

Q. Would you state the name of that corporation? A. It was Overseas Finance Corporation.

Q. Now, did you have an agreement with or discussions with your father about procuring that option? A. Oh, yes, definitely because otherwise—

Mr. Burling (interposing): May I inquire of counsel: Is Overseas Finance Corporation the same thing as Uebersee Finanz Korporation?

Mr. Gallagher: Yes, it is.

Mr. Burling: They are identical?

Mr. Gallagher: Identical.

Read the question.

(The last question and answer were read by the court reporter.)

A. (Continued) Otherwise, I would not have been able—

I didn't have money of my own and I would not have  
590 been able to acquire the corporation.

By Mr. Gallagher:

Q. State what the nature of the discussion with your father was about that option. A. Yes. He told me, he said he was willing to give me a loan of about three and a half million Swiss francs.

At this time there was no foreign currency control in Germany, and he was free to dispose of money he had in Switzerland.

Q. Now, did he make those funds available to you in the spring of '31? A. No. I had an option running for about a year until, I think, it was from April until December, and I didn't intend to return to Switzerland, to go to Switzerland definitely before the end of the year, so I just waited before I exercised the option.

Q. Did he participate in the option in any wise, by way of guarantee or otherwise? A. Yes; that is what I just have told. He promised me to put at my disposal some

money necessary to fulfill my obligation to finance this corporation.

Q. Now, directing your attention to the summer of 1931—strike that.

Was there any action taken immediately at that time with respect to going forward with exercising this 591 option? A. No, but all of a sudden the foreign funds control came in, and he had to report to the German authorities, and he was also told to file application, that he could not dispose of the funds we had promised.

Q. I show you a letter of September 9, 1931, identified as Defendant's Exhibit No. 1, a letter to the Revenue Office in Wiesbaden, from your father, together with an exhibit identified as Defendant's Exhibit 2, an enclosure attached to Defendant's Exhibit No. 1, and ask you if that is the application that your father filed with the Foreign Currency Control authorities with respect to the Swiss francs?

A. That seems to be the translation of it.

Q. That seems to be the translation of it. A. Yes. That is the translation of this application.

Mr. Gallagher: Have you seen this, Your Honor?

The Court: I do not think I have.

By Mr. Gallagher:

Q. Now, during that period of August, 1931, and September, 1931, you were still living in Antwerp; is that correct? A. Yes, sir.

Q. Did you have any further discussions with respect to the general economic situation in Europe at that time and foreign currency legislation? A. Yes, with many 592 people. The situation got worse and worse, and I finally decided to go to Ruesselsheim to see my father about it.

Q. Did you go to Ruesselsheim to see him? A. Yes.

Q. Did you have any discussion there with him? A. Quite a long discussion.



Q. What was the substance of that discussion? A. I just went over all these former discussions again, and I gave him all my reasons why I didn't want to stay with General Motors, and why he should look after me now. Especially I was afraid that we would not get to transfer all these Swiss francs to me permitted.

Q. You are referring to Defendant's Exhibit No. 1? A. Yes.

Mr. Gallagher: Will you mark these?

(Two documents were accordingly marked as Plaintiff's Exhibits Nos. 50 and 51, for identification.)

By Mr. Gallagher:

Q. I show you now a cablegram, dated September 16, 1931, stamped September 17, 1931, addressed to John Thomas Smith, vice president, General Motors, and I will ask you if you sent that cable, which bears the signature, Fritz von Opel, Geconanver, Antwerp? A. That was the cable address of General Motors, Antwerp. I sent 593 it from there.

Q. Was this sent as the result of a discussion with your father? A. Yes.

Q. I now show you Plaintiff's Exhibit 51, a cable dated September 21, 1931, addressed to Fritz von Opel, Geconanver, Antwerp, and signed by John Thomas Smith, and ask you if you received that cable? A. Yes; that was his reply.

Q. This was the reply to Plaintiff's Exhibit 50? A. Yes.

Mr. Gallagher: I now offer these in evidence.

(The documents previously marked for identification Plaintiff's Exhibits 50 and 51 were received in evidence.)

By Mr. Gallagher:

Q. Did you have any further discussion with your father now after the forwarding and receipt of these answers from John Thomas Smith? A. I went to Buesselsheim or Wiesbaden at the end of September and looked into this so-called escrow agreement.

Mr. Gallagher: Let me have number 6, Plaintiff's No. 6.

By Mr. Gallagher:

Q. You are referring to Plaintiff's Exhibit No. 6, 594 which has previously been introduced (handing a document to the witness)? A. No; that is not it.

Mr. Gallagher: Strike that. I am sorry.

By the Court:

Q. I want to take you back a minute. Where was this Overseas Finance Company, Limited. Where was that organized? A. It was organized—it was a Swiss corporation.

Q. A Swiss corporation? A. Yes; in Zurich, Switzerland.

Q. When did it come into existence? A. It was founded in 1922.

Q. And what was the purpose of that company? A. They were doing financial transactions in general. It belonged to a friend of mine and it had become dormant, and they wanted to use it for other purposes.

Q. Financial transactions where? A. I could not tell you. I didn't own the corporation at the time.

Q. I thought you said financial transactions. A. Yes; financial transaction, but I don't know the details of those financial transactions.

Q. But the home of the corporation was in Zurich, Switzerland? A. Yes; it was a Swiss corporation.

595 Mr. Gallagher: It has been stipulated that the corporation is Swiss, Your Honor.

The Court: Now, I understand from Mr. Burling's question, that you came to the point where they became merged, merged in the plaintiff's corporation?

Mr. Gallagher: No, that is not quite so. The option was never exercised.

The Court: I understood him to ask you the question if this Overseas was the same as the plaintiff.

Mr. Gallagher: It is.

The Court: Are you going to bring that out later and in what respect?

Mr. Gallagher: Yes, Your Honor.

The Court: All right.

Mr. Gallagher: I might explain that Mr. Ingoldsby suggested, and I think it might be proper to explain to Your Honor that this option agreement, giving the parties the right to sell, or buy Overseas, was never exercised because in our proof, subsequently, we will show the father never did obtain a license with respect to the Swiss francs, and therefore the option was ended.

The Court: All right. I was not following it. I have it now.

By Mr. Gallagher:

Q. Now, I believe you stated that on arriving in  
596 Rueselsheim or Wiesbaden the end of September or the beginning of October, you became aware of the escrow agreement; is that correct? A. Yes. If I remember correctly, I told you my father a day or two previously had sent me a copy.

Q. And that is Plaintiff's Exhibit 3, a translation of it, or is that the English? A. No, it was—it seems to be a copy of the original.



Q. Now, after discussing this escrow agreement, as you have stated, with your father, what action did you next take? A. I read the foreign currency regulations, and I found out, at least as far as a non-lawyer could say, that it was permissible for him to make me a gift of these Opel shares, and that is what I asked him to do, and I gave my reasons for it.

Q. Would you state again the reasons, Mr. Opel? A. First I told him that the entire family of my seven sisters and cousins were taken care of, and that I was the only one who had not a penny to his name, and I had given up my contract, which had paid me a quarter of a million marks a year, and I said I would not like to return to Germany, and that this, apparently, was the last chance for him to set me up outside of Germany, and I also told him that, after all, this contract would not mean very  
597 much, as if it was exercised by General Motors, he would get reichsmarks and he had plenty of reichsmarks, and he would have to keep them inside of Germany, whereas for me, as I was called *devisen auslander*, I could get that in dollars and stay in America or Switzerland—anyhow, outside of Germany.

Q. How many reichsmarks did your father have in Germany at the time? What was his wealth at that time, forgetting about the option? A. Yes. I think he declared property in Germany, and you have to declare your property in Germany every second year, and at this time I think it was around twenty-one or twenty-two million reichsmarks.

Q. That was the tax assessment value? A. That was only so to say taxable value, and the real value was considerably higher.

Q. What would you say the figure approximately would be? A. It depends on the amount of real estate. I would say at least twenty-five million, if not more.

Q. In the course of this discussion with your father about the escrow agreement, and the situation that you have just

pointed out, was any reference made at that time about the Swiss franc situation and his application? A. Yes. That is what I told him.

598 I said to him: If you had given me the Swiss francs outright in April, I would not be here. They would be mine, but now this regulation came in between, and the only thing you promised me was a loan, and even if we get permission, I would have to return that money after a year or two, and it would be no good to me anyhow.

Q. Now, as a result of those discussions with your father, what steps did you take? A. He told me, he said if I would prove to him by a competent lawyer that this gift was legal, he would make it to me, and a number of provisions.

Q. Did he make any suggestion as to whom you should see? A. Yes. Our family lawyer at the time was Dr. Hachenburg, and he even insisted that I should pay for this visit to Hachenburg.

Q. He even insisted what? A. That I should pay for the visit to Hachenburg; I should pay the lawyer's bill.

Q. Pursuant to this discussion, did you see Dr. Hachenburg? A. Yes; I went there on the afternoon of October 2nd.

599 Q. And as you previously testified, it was on that occasion that he gave you this document, which has been offered in evidence as Plaintiff's Exhibit 9, entitled Fundamental Considerations; is that not true? A. Yes; he dictated that at the end of our discussion in the afternoon.

Q. How long did you have a discussion with him? Do you have any recollection at all? A. It was a quite lengthy discussion because we went into all the different angles, and we discussed, as you say, the impositions my father wanted made in the contract, and he was mostly concerned getting me on an even basis with my sister, and he said: If I make you this gift, you will have an income of three or four hundred thousand dollars a year, which is much more

than your sister, and if you get fifty or sixty thousand for this, that was about the salary I had in the factory, and the rest I should, he said, account for with my sister.

Q. By account, what do you mean by that, Mr. von Opel?

A. It should be added to the capital, and in case of my parents death, it should be considered as given to me, not only the capital but also the 80 per cent; not used by me.

Q. That is the example that Dr. Kronstein gave His Honor here in court? A. Yes.

Q. As a result of this conversation with Dr. Hachenburg, you returned, if I understand you correctly, from Mannheim to your father's home with this Exhibit 9 in your possession? A. Yes, I did.

600 Q. And as you previously testified, you then discussed this outline and the suggestion of Dr. Hachenburg?

A. Yes, and he told me immediately that the outline was too long, and he said he didn't like this complicated lawyer's language, and it should be simplified.

Q. Did your father make any statement at that time with respect to any of the provisions referred to in this outline which Dr. Hachenburg had given you? A. Yes. I think there was mention made of a holding corporation, and he didn't like this word holding corporation for some reason of his, and he wanted that stricken out.

Q. Do you recollect any reason he stated at the time? A. I think holding corporations under German viewpoint of tax declaration were was unpopular in Germany as at the time in the beginning of the New Deal.

Q. After having had discussion with your father, can you state what action was thereafter taken? A. This letter of October 3rd arrived.

Q. You mean by that, Plaintiff's Exhibit 7, which has heretofore been introduced? A. Yes, and the only paragraph my father was interested in, that Dr. Hachenburg stated it was a legal transaction.

Q. What was then done, and we are talking about October 5, 1931, Mr. von Opel. What action was taken by you



601 or your father or mother or all of you? A. My father gave the two documents, the letter of Hachenburg, and this what you call, fundamental considerations to Dr. Wronker-Flatow, and he told him to cut out the whole provision and shorten it somewhat and put it in a little bit more easily understandable language, and he said it should not have more than a page or a page and a half, and he should not spend too much time on it, the details are not so important.

Mr. Gallagher: Let me have Plaintiff's Exhibit No. 5.

By Mr. Gallagher:

Q. Did Dr. Wronker-Flatow prepare a gift agreement thereafter? A. Yes; the same day.

Q. The same day? A. Yes.

Q. When during that day? Do you recollect?

Mr. Burling: Will you fix what date this is?

Mr. Gallagher: This is October 5, 1931.

By Mr. Gallagher:

Q. Was it in the morning or in the afternoon? What is your recollection on that? A. There was one mistake made this morning. I think this mail, the letter of Dr. Hachenburg, wasn't addressed to Wiesbaden, but to the office in Ruesselsheim and received there in the morning.

602 Q. In the morning of October 5th? A. Yes.

Q. Will you state when Dr. Wronker-Flatow prepared this gift agreement, which is in evidence as Plaintiff's Exhibit 5? A. That was prepared on October 5th.

Q. Will you state whether or not that document was signed on that day? A. That is, of course, an English translation. It is not the original.

Q. Yes; we have substituted that. A. My father signed.

it first, and I signed it second in his office in Ruesselsheim at the factory.

Q. And you note thereon that your mother's signature appeared there? A. Yes.

Q. I, the wife, Marta von Opel, agree to the above agreement, and signed by her? A. Yes; she signed it in the afternoon, after our return home to Wiesbaden.

Mr. Gallagher: Let me have Plaintiff's 4.

By Mr. Gallagher:

Q. After the signing of this agreement on October 5, 1931, did you have any further discussions with your father or mother or Dr. Wronker-Flatow? A. Before we went home; certainly, yes.

Q. And, now,— A. (Interposing) I spoke to my father too about the necessary secrecy. I was afraid at the time that the Government would put in some retroactive legislation making this gift impossible retroactively, and I asked of him not to speak to anyone about it, so that it would not become known.

Q. When you speak of retroactive legislation, just what do you mean by that, Mr. von Opel? A. Legislation which here you call, I think, ex post facto. That means it doesn't work from the day the legislation is published, but retroactively, covering a period back.

Q. Do I understand you correctly, that you mean you feared if this gift became known; that the foreign currency authorities would issue some regulation as soon as they knew it and make it effective to a date in the past? A. Yes. I thought, of course, they would not do that for many years, but I thought for a short period back they may do that, and that is the reason I asked my father especially not to report the gift tax, but to wait until the last day possible.

Under the German laws there is a three months period within which the gift tax has to be paid, and I asked that

my father wait until the last day with payment for the reports.

604 Q. Did you ever later hear or at that time were you aware of any legislation which was retroactively adopted and enforced in Germany? A. I think the most spectacular case was the case of Van der Lubbe, a Dutchman, who alleged fired the Reichstag, and I know some outstanding Americans went to Germany to protest against the procedure.

Q. Getting back to the signing of the gift agreement, Plaintiff's 5, in the afternoon or early evening of October 5, 1931, what was the nature of your discussions, if any, thereafter, and I will now show you Plaintiff's Exhibit 4.

I also hand you 4-A in evidence, which appears to be a certification by the United States counsel with respect to Plaintiff's 4, which is the power of attorney to cover this.

Now, will you continue, Mr. von Opel, and state what the discussions were after the signing of the gift agreement? A. Yes. The discussion concerns the escrow agreement itself, I explained to my father that it was ridiculous not to immediately contact General Motors and put the gold clause into this contract, and there was no safety clause in the contract. It read it was based on reichsmarks, and at this time it was apparent that the reichsmark might be inflated, and that is the reason that I suggested to immediately contact Smith, and upon second consideration, I thought it might be better that instead of me wiring

605 Smith, because I know he was coming to Europe anyhow, I thought it would nail him down at that time if we would say that myself or my father was coming, and that was the reason that my father's name appears in the—

Q. (Interposing) Just a minute, please.

Now, the cablegram you just spoke about was to John Thomas Smith of General Motors, signed by your father, and sent on the 5th of October, 1931; is that correct? A. Yes, sir.



Q. And I will show you now Plaintiff's 52 for identification and ask you if that is the document? A. Yes; that is it.

Q. Did you receive an answer to that? A. Yes.

Q. I now show you Plaintiff's Exhibit No. 53, purporting to be a cablegram, dated October 5, '31, and addressed to, Wilhelm von Opel by John Thomas Smith, and ask you if that is the answer received. A. Yes.

Mr. Gallagher: I offer them in evidence.

Mr. Burling: Are these documents that have been obtained from the defendant and by arrangement with them?

Mr. Gallagher: Yes.

Mr. Burling: I have no objection.

606 (The documents referred to were marked and received in evidence as Plaintiff's Exhibit Nos. 52 and 53.)

By Mr. Gallagher:

Q. Will you tell me the nature of the wire or cable, Plaintiff's Exhibit 52? Is that a night letter or a straight wire? What would you term that? A. That is apparently a straight wire.

Q. Was there any particular reason for sending a straight wire? A. Oh, yes, because I knew from the former exchange of cables that Mr. Smith was about to sail for Europe on October 15th, in the middle of October, and I tried to intercept him in New York before he sailed.

Q. After you received the answer from Mr. Smith—what date was that that you received that? Do you recollect? Was that the 5th or 6th? A. It was, I think, it came in October 6th.

Q. October 6th? A. Yes.

Q. And after you received the cablegram from Mr. Smith, what did you next do? A. We already the day before, on

October 5th, Dr. Wronker-Flatow had suggested a power of attorney, which I should take along should I go to  
607 America, and this power was signed in Frankfort in the American General Counsel's office by my father on October 6th.

Q. And Plaintiff's Exhibit No. 4 and 4-A, which have been heretofore offered, are the documents you refer to? A. They seem to be copies.

Mr. Gallagher: Your Honor, we have a whole series of some ten or twelve exhibits, if you will give us an opportunity for a minute or two, and we will have the clerk mark them, and we want them to interrogate the witness.

The Court: All right.

By Mr. Gallagher:

Q. Now, did you have any discussions with respect to reasons for procuring a power of attorney, which is Plaintiff's Exhibit 4? A. Oh, yes; definitely.

Dr. Wronker-Flatow, before he became counsel of General Motors, was counsel of duPont, of Kodak, and other American corporations in Germany, and he had quite a lot of international experience, and he told me, he said, I should not depend too much upon a German gift contract in America, but should take a power of attorney along to accomplish my purpose a little speedier, and in my opinion speed and secrecy is the two principles we had to attend to.

Mr. Gallagher: Now, these documents which are going to be submitted, and which will be identified and then  
608 offered, have already been answered by the notice to admit of both parties.

By Mr. Gallagher:

Q. Now, those were the reasons you stated why the power of attorney was procured? A. He also advised us to have

sent our signature card there, too, to the National City Bank so our signatures would be available at the National City Bank.

Q. And was that done? A. Yes; it was also done.

Q. Did you leave thereafter for America? A. Yes; immediately after.

Q. On what date? A. I don't remember whether I boarded the boat in Bremen or in Cherbourg. One can gain about one and a half days in boarding it in Cherbourg because the steamer goes from Bremen to Southampton, and from Southampton to Cherbourg, and from Frankfort, where we were living, is about an even distance.

Q. Did you take any documents with you when you left for America? A. I took the gift deed, yes. I took the power of attorney, and the signature card was sent by mail.

Q. While you were on the boat on your way to America, did you have occasion to send any cablegram to  
609 America? A. Yes. From the steamer I sent a cablegram to the trustee of the escrow agreement, to the National City Bank.

Q. I now show you Plaintiff's Exhibit 54 for identification, a cablegram to the National City Bank in New York, dated October 13, 1931, signed Fritz von Opel, and ask you if that is the cablegram which you sent? A. It is a radiogram sent from the steamer, not a cablegram.

Q. That was sent by you? A. Yes.

Mr. Gallagher: I now offer this Plaintiff's 54 in evidence.

Mr. Burling: There is a mix-up, Your Honor. There are two Plaintiff's 54.

Mr. Baum: There are books which were 54 to 57.

Mr. Gallagher: I am sorry. Change this to Plaintiff's  
58.

By Mr. Gallagher:

Q. You have been speaking about what is now identified



as Plaintiff's Exhibit 58; is that correct, Mr. von Opel? A. Yes, sir.

Mr. Gallagher: I now offer 58 in evidence, a cable to the National City Bank.

You will have to change all those numbers, Mr. 610 Clerk.

The Deputy Clerk: Why can't you call them "A"?

Mr. Gallagher: We want to keep the same order of numbers as long as possible.

The Court: Take your time and correct them.

Mr. Ingoldsby: Inasmuch as a couple of numbers were omitted, it necessitates changing the numbers of all these.

What is the last exhibit you now have?

The Deputy Clerk: 82.

Mr. Ingoldsby: Oh, no, no.

Mr. Gallagher: 58 is the last.

Mr. Ingoldsby: Should not the next number be 59? In other words, as I understand it, the books and records, which were the last documents identified, were Plaintiff's exhibits before the papers which have been shown to Mr. von Opel.

The last number was what—57?

The one just handed to the clerk should be 58, and this should be 59 and run chronologically from there on.

Mr. Gallagher: That is correct.

Mr. Ingoldsby: Would you mind changing the number on this, for example, 55 should be 59, and so on through the list. Do you understand that?

The Deputy Clerk: I took it from your last exhibit number, which was 50, and I handed you back 50, 51, 52, 53, and so on in rotation.

Mr. Gallagher: You have to renumber these be-  
611 cause we have already got Plaintiff's 54, 55, 56, and 57. We are keeping the same numbers as in the deposition.

The Court: Suppose you take five minutes to straighten it out. I will take a recess.

(Thereupon a short recess was had, during which Mr. Gallagher asked that the following statement be shown in the record):

Mr. Gallagher: The cablegram referred to of October 13, 1931, to the National City Bank, from von Opel, identified as 57 and 58, has been offered in evidence as Plaintiff's 54, on correction by the clerk.

(At the conclusion of the recess, the following occurred):

612 Mr. Gallagher: Your Honor, I wish to take the burden off of the clerk, where the mistake came from our error in originally having the books and records identified.

The Court: All right.

The Deputy Clerk: Thank you, Mr. Gallagher.

Mr. Burling: Your Honor, Mr. Gallagher is very courteous in taking the burden off of the clerk. May I ask him also to take the burden off of us? We are now confused as to what exhibit is what. But rather than take up the time now to straighten it out, may I suggest, Your Honor, that the plaintiff furnish us with a table of exhibits, the way they are now numbered?

Mr. Gallagher: We will be glad to do so.

I might say, Your Honor, that last document is now in evidence as Plaintiff's Exhibit 54.

(The document referred to was marked and received in evidence as Plaintiff's Exhibit No. 54.)

By Mr. Gallagher:

Q. That cablegram, Plaintiff's Exhibit 54, Mr. von Opel, requests that you have a conference on a confidential matter: that you are arriving on the following afternoon, the 14th of October.

When you arrived in New York, what did you do? A. I went immediately to the National City Bank to find out the name of the officer who was in charge of this  
613 escrow agreement.

Q. Did you find out who he was? A. Yes, I tried to find out, and found it out.

Q. What was his name? A. His name was vice president Pratt, of the National City Bank.

Q. And did you have a conversation with him? A. Yes.

Q. And what was the nature of that conversation? A. I asked him whether it would be possible for the trustee to accept me as a new party to the contract.

Q. Did you discuss with him the power of attorney, you state, which has previously been offered in evidence? A. No; I asked him first whether he would accept me as a new party. I told him about the deed of gift, and he asked me if it was an instrument made in America. And I said no, it was a German deed of gift. And he told me it would be rather complicated, that not only his lawyers but some German expert would have to go into the matter to find out the extent of this gift agreement.

I asked him how long that would take, and he said a number of days or weeks. So I immediately said, "I have taken a power of attorney along." I said I had expected it, and was so advised by counsel. And I showed him the power of attorney.

614 Q. Did he state to you what action you should take, or what action did you take after the conversation?

A. After this conversation, either the same day or one of the next days, I filed this power of attorney with the National City Bank. But the next day I went to General Motors and used this power there.

Q. Whom did you see at General Motors? A. I saw General Counsel John Thomas Smith.

Q. And you had a discussion with him, did you? A. Yes.

Q. What was the nature of that discussion? A. The first discussion was whether General Motors would be willing to put a gold clause into this agreement, meaning to estab-



lish a relation between the reichsmark and the dollar, or gold.

Q. And did Mr. Smith give you any information at that time? A. Not immediately. He thought it over, I think, a day or so, and then the corporation refused. And I terminated the conference.

Q. I now show you Plaintiff's Exhibit 6 in evidence, a letter dated October 17, 1931, addressed to General Motors and signed Wilhelm von Opel, per Fritz von Opel, attorney in fact, and ask if that is the termination letter. A. Yes, sir. It is a copy.

615 Q. Well, it is the same thing in here, Mr. von Opel.

I note that in that termination letter, Mr. von Opel, it calls for six separate payments. Was there any reason for that? A. Oh, yes. I saw that the reichsmark exchange rate in New York might be rather unstable, and I didn't want to get the rate of exchange based upon any law day. So I asked the corporation to base it upon the average of six days.

Mr. Gallagher: I now offer in evidence Plaintiff's Exhibit 55, Your Honor, a letter of October 17, 1931, addressed to the National City Bank by John Thomas Smith, with respect to this matter.

(The document referred to was marked and received in evidence as Plaintiff's Exhibit No. 55.)

By Mr. Gallagher:

Q. I show you Plaintiff's Exhibit 56 for identification, Mr. von Opel, a letter dated October 19, 1931, to the National City Bank, and signed Fritz von Opel. A. Yes.

Q. Will you state whether or not that letter was signed by you? A. Yes, sir.

Q. And did you address that to the bank? A. Yes, sir, I did.

616 Q. Is that with reference to this same matter? A.  
Yes, sir.

Mr. Gallagher: I now offer this letter in evidence, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 56.)

By Mr. Gallagher:

Q. In your conversations with Mr. Smith, did he aid you at all with respect to any introduction to the bank officials? A. Yes, I think a few days later he gave me a kind of introductory letter to the bank.

Q. I show you a letter of October 19, 1931, addressed to Mr. E. F. Regan, assistant vice president, National City Bank, and ask you if this is the letter you refer to. A. Yes.

Q. It is identified as Plaintiff's Exhibit 57. A. Yes; it was given to me two days after I terminated the contract.

Mr. Gallagher: I now offer Plaintiff's Exhibit 57.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 57.)

By Mr. Gallagher:

Q. I now show you a letter, Plaintiff's Exhibit 58, Mr. von Opel, a letter of October 20, 1931, addressed to  
617 General Motors, by Wilhelm von Opel, by Fritz von Opel, attorney in fact, and ask you if you sent that letter to General Motors. A. Yes, I did.

Mr. Gallagher: I now offer Plaintiff's Exhibit 58, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 58.)

Mr. Gallagher: I now offer Plaintiff's Exhibit 59, Your Honor, a letter of October 20, 1931, addressed to the General Motors Corporation, attention Mr. John Thomas Smith, signed by G. J. Kenny, assistant trust officer of the National City Bank.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 59.)

By Mr. Gallagher:

Q. I will now show you, Mr. von Opel, Plaintiff's Exhibit 60 for identification, a letter of October 20, 1931, sent to General Motors by Fritz von Opel. Did you send that letter? A. Yes, sir. I did.

Mr. Gallagher: I will offer Plaintiff's Exhibit 60, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 60.)

618 By Mr. Gallagher:

Q. And I now show you Plaintiff's Exhibit 61, Mr. von Opel, a letter of October 20, 1931, addressed to General Motors, signed by Wilhelm von Opel, by Fritz von Opel, attorney in fact, and I will ask you if you addressed that letter to General Motors. A. Yes; it all concerns the matter of the last three letters, the purchase of General Motors stock.

Mr. Gallagher: I now offer Plaintiff's Exhibit 61, Your Honor.



(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 61.)

Mr. Gallagher: I also offer Plaintiff's Exhibit 62, a letter to Wilhelm von Opel, in care of John Thomas Smith, dated October 20, 1931, from J. P. Morgan & Company.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 62.)

By Mr. Gallagher:

Q. I show you a letter, Plaintiff's Exhibit 63, Mr. von Opel, dated October 20, 1931, addressed to General Motors, signed Wilhelm von Opel, by Fritz von Opel, attorney in fact. Did you send that letter to General Motors? A. Yes. I think it must be identical with one of the first letters.

619 Q. It is? I am sorry.

Mr. Gallagher: No. 63, Your Honor—I will offer it.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 63.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 64 for identification, a letter dated October 22, 1931, signed by John Thomas Smith, addressed to Dr. Fritz von Opel, Plaza Hotel, New York. Did you receive that letter? A. Yes, I received it.

Mr. Gallagher: I now offer Plaintiff's Exhibit 64, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 64.)

By Mr. Gallagher:

Q. I now show you a letter of October 23, 1931, addressed to John Thomas Smith, by Fritz von Opel, and ask you if you sent that letter, Plaintiff's Exhibit 65 for identification.

A. Yes.

Mr. Gallagher: I now offer Plaintiff's Exhibit 65, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 65.)

620 By Mr. Gallagher:

Q. Now, during this period of time, Mr. von Opel, from October 17, 1931, until October 23, 1931, you were acting, as I understand it, under the power of attorney which had been given to you by your father and which is in evidence as Plaintiff's Exhibit 4, is that correct? A. Yes, sir.

Q. I will now show you Plaintiff's Exhibit 47, which is in evidence, a letter addressed to Fritz von Opel, dated September 22, 1933, signed by Assistant Vice President, admitted by the parties to this action to have been sent and received, and quoting therein a cable received from the Deutsche Bank & Disconto Gesellschaft in Frankfurt, on October 24, 1931, and ask you whether or not that power of attorney was received and whether or not you acted pursuant to it. A. Yes, sir.

Mr. Gallagher: Plaintiff's Exhibit 47, which is in evidence, I believe, and I will offer it if it is not.

(Document previously marked for identification Plaintiff's Exhibit No. 47 was received in evidence.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 66 for identification, a letter dated October 28, 1931, addressed to the National City Bank, attention Mr. Regan, signed Wilhelm von Opel by Fritz von Opel, attorney in fact, and ask  
621 you whether or not you sent this letter. A. Yes. It was sent, and it is a new power of attorney.

Q. I see. What was the substance of that letter? What was the purpose of it, Mr. von Opel? A. Under the escrow agreement, General Motors had to make payment within four weeks; and to simplify matters they wanted to pay to my father's account there. And I, as his attorney, instructed them to do it.

Q. And what does this letter do thereafter? A. May I see it again?

Q. Does that letter constitute a transfer from your father's account to your account? A. Oh, yes. This is the second operation.

Mr. Gallagher: I now offer Plaintiff's Exhibit 66, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 66.)

By Mr. Gallagher:

Q. Now, Mr. von Opel, did you at this time give any instructions to the bank with respect to payments of income and dividends and interest and so forth?

Mr. Burling: Will you specify the bank you are referring to, please?

622 Mr. Gallagher: The National City Bank, or the City Bank.

Mr. Burling: Will counsel please specify which bank he is referring to?



Mr. Gallagher: It is my information that by virtue of a merger, it is one bank, operating under one or two names.

Mr. Burling: I think they are owned together, but operated separately. Your Honor.

The Court: I guess perhaps the witness will have to tell us.

By Mr. Gallagher:

Q. This last exhibit, Plaintiff's Exhibit 66, is addressed to the National City Bank, is it not, Mr. von Opel? A. Yes.

Q. And it asks them to transfer any securities or cash they are now holding, or may hold in the future, for your account to the City Bank Farmers Trust Company? A. Yes.

Q. For the account of Fritz von Opel? A. Yes.

Q. Is that correct? A. Yes.

Q. So that we are now talking about moneys in the City Bank Farmers Trust Company, which, however, I understand is the same thing as the National City Bank.

623 A. It is shown here on the exhibit by the A and B.

Q. All right. Now, did you give the City Bank any instructions with respect to your father's account? And I show you plaintiff's exhibit 69 for identification. A. Yes. I instructed them specifically. It was only a transfer account. The money was in there only for a day, going in and going out immediately. And I specifically instructed them not to report anything to my father.

Q. Would that be the City Bank you gave those instructions to, or the National City Bank? A. That was the National City Bank, because my father's account was only at the National City Bank.

Mr. Gallagher: I now offer Plaintiff's Exhibit 69, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 69.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 70 for identification, which purports to be a custodian account for Fritz von Opel, Main A/C, City Bank Farmers Trust Company, and ask you with respect to the second page there, or the first page inside the folder, whether or not that is your signature on that document. A. Yes, it is.

624 Q. I note there a line which states "My legal residence is Belgium." A. Yes.

Q. Did you state that? A. Yes, sir, I did.

Q. Turning to the next page, page 2 inside this folder, I note therein a Custodian account audit sheet. Did you sign this sheet? A. No, I didn't.

Q. Does this sheet contain thereon certain instructions, apparently contained thereon certain instructions? A. Yes; I think I gave those instructions.

Q. And you gave those instructions? A. Yes, I think so.

Q. I note therein it states again "Legal residence," and your residence is stated "Belgium." Is that correct? A. Yes, that is correct.

Q. Now, would you state what the substance was of the instructions that you gave to the bank? A. I instructed them to transfer 20 per cent of the balance in the main income account to a custodian account Fritz von Opel, and 80 per cent to the principal von Opel main account. And I further asked them to send the statements to me and one to my father.

Q. What would the statement with respect to  
625 your father be? Does it state thereon? A. A statement in respect to the income.

Q. With respect to the income? A. Yes.

Q. I note thereon a forwarding address or an address "Rupenhorn 11, Berlin-Spandau, Germany." Could you

state what that address is? A. That was a forwarding address I left with the banks. They wanted to reach me by wire, and I told them that would be the first place they could reach me.

Q. I see.

Mr. Gallagher: I now offer Plaintiff's Exhibit 70, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 70.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 71, Mr. von Opel, which is stipulated between the parties to be a memorandum from the files of the City Bank, dated November 17, 1931, addressed to Miss Cantrell, of the Remittance Department, and signed by B. D. Shapiro, Custodian Administration, and ask you if you gave to the Custodian Administration or to some other officer of the bank the instructions which appear therein. A. I don't remember this.

Q. You don't remember it? A. No.

Q. Reading it, did you recollect that that would be the substance of a conversation you might have had or any instructions you might have given? A. It might be.

Mr. Burling: We will admit that that was kept in the regular course of business; we will not object to your offering it.

Mr. Gallagher: We now offer it as Plaintiff's Exhibit 71, Your Honor.

(Document referred to was marked and received in evidence as Plaintiff's Exhibit No. 71.)